

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 485.

RUSSELL MOTOR CAR COMPANY, APPELLANT,

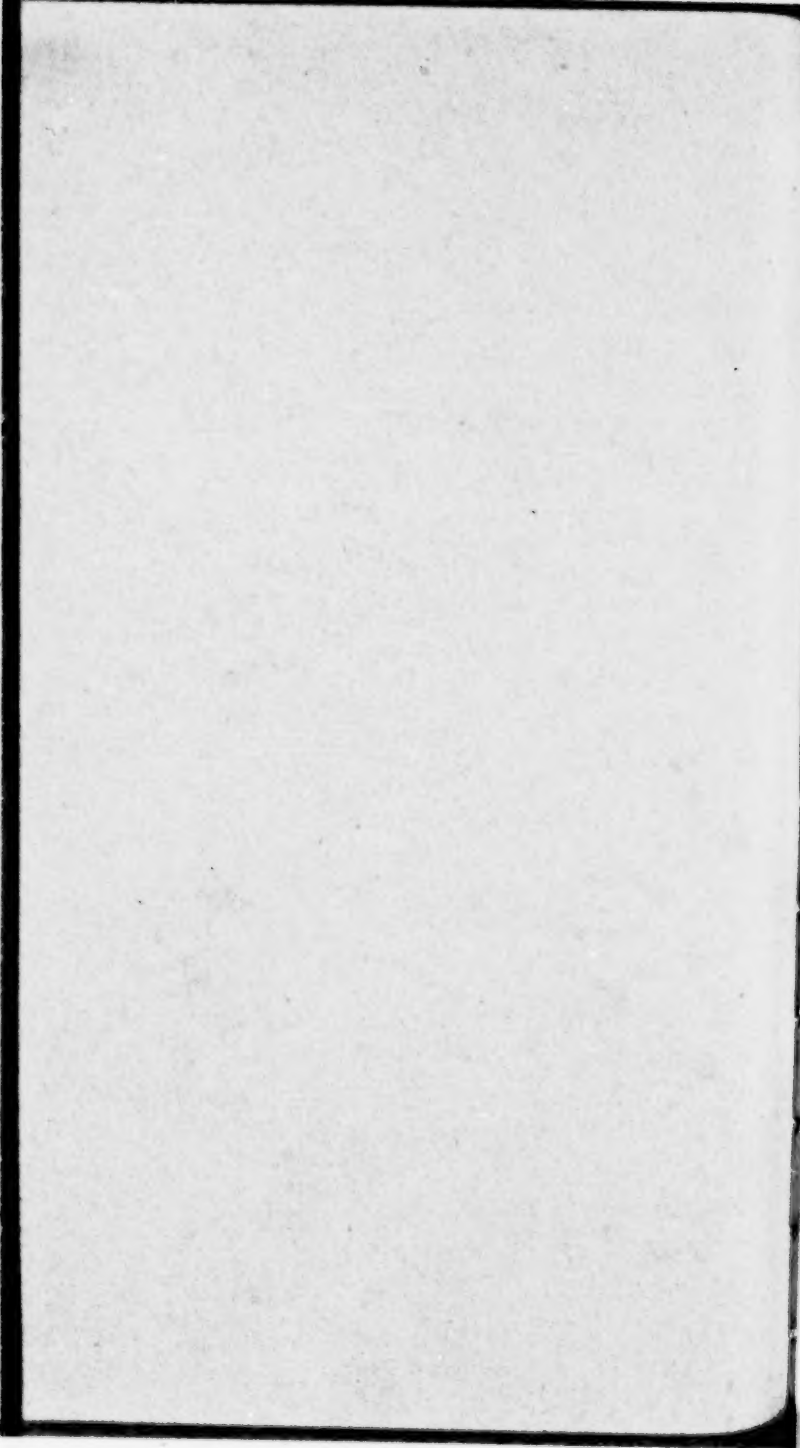
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 15, 1922.

(29,085)



(29,035)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 485.

RUSSELL MOTOR CAR COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
History of proceedings.....	1	1
Amended petition.....	1	1
Exhibit A—Contract between Russell Motor Car Co. and The United States, May 14, 1918.....	19	13
B—Schedules and inventory of raw material.....	54	31
C—Statements, summary, inventory, &c.....	88	54
D—List of machinery and equipment as shown in claim #1498, &c.....	178	117
General traverse.....	180	119
Argument and submission of case.....	180	119
Findings of fact.....	181	119
Conclusion of law.....	191	131
Opinion of the court by Downey, J.....	191	131
Judgment of the court.....	205	144
Plaintiff's application for appeal.....	205	144
Allowance of appeal.....	205	144
Clerk's certificate.....	206	145



1

Court of Claims.

No. 34698.

RUSSELL MOTOR CAR COMPANY

VS.

THE UNITED STATES.

I. History of Proceedings.

On September 14, 1920, the plaintiff filed its original petition.

On October 16, 1920, the defendant filed a demurrer to said petition.

On November 20, 1920, by leave of court, the plaintiff filed an amended petition. Said amended petition is as follows:

II. Amended Petition.

(Filed Nov. 20, 1920.)

To the Honorable the Court of Claims:

The above named claimant, the Russel Motor Car Company, respectfully shows to this Honorable Court:

I.

First. That it now is and at all of the times hereinafter mentioned was a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware and having a place of business at the City of Buffalo in the State of New York and presents this, its petition and claims, in its own right as such corporation.

2 Second. That heretofore and on or about the 14th day of May, 1918, your petitioner, being duly authorized and empowered by law so to do, made and entered into an express contract, agreement and undertaking with the United States of America, acting by and through the Honorable Franklin D. Roosevelt, then duly acting Secretary of the Navy of the United States and who was duly authorized and empowered by law as aforesaid to make and enter into said contract, agreement and undertaking, and whereby your petitioner undertook, covenanted and agreed to and with the United States of America acting as aforesaid, for the consideration hereinafter mentioned, to manufacture for it 250 3" Anti-Aircraft Gun Mounts, Mark "XI, Modification 2" complete with sights, Mark "XVI, Modification 1" at the agreed price of \$7,860.00 each. That this said agreement, the terms, conditions and deliveries are specifically set forth in a contract which

was referred to in the bills for payment as Dept. No. 1498 and which is fully set forth as Exhibit "A" attached to this petition and made a part hereof and to which your petitioner begs leave to refer, as fully as if herein set forth.

Third. That heretofore and on or about the 3rd day of November, 1917, your petitioner, being duly authorized and empowered by law so to do, made and entered into an express contract, agreement and undertaking with the United States of America, duly acting by and through Honorable Franklin D. Roosevelt, then duly acting Secretary of the Navy of the United States, and who was duly authorized and empowered by law to make and enter into said contract, agreement and undertaking, whereby your petitioner

3 undertook, covenanted and agreed to and with the United States of America acting as aforesaid for the consideration hereinafter mentioned, to furnish and deliver as ordered, 400 3" Anti-Aircraft Gun Mounts, Mark "XI Model 2," complete with sights Mark "XVI, Modification 1 (except telescopes)" at the following dates and at the agreed price of \$8,462.00 each. That said contract was substantially in the same form and contained the same conditions except for the number of gun mounts, the payments and the dates of delivery as said contract hereinbefore referred to in paragraph Second of this complaint and annexed hereto as Exhibit "A" and was known and designated by the defendant and the parties hereto as Dept. No. 949. Paragraph Second of this contract herein referred to as dated November 3rd, 1917, provided among other things:

"Second. The party of the first part will deliver the mounts required under this contract within the period stipulated below, viz:

15 mounts on or before May 15, 1918, and additional mounts as follows:

25 June 15, 1918; 40 July 15, 1918; 50 each August 15, September 15, October 15 and November 15, 1918; and 60 each December 15, 1918, and January 15, 1919."

Fourth. That said contract No. 1498, particularly set out as Exhibit "A" attached to this petition, was duly awarded to your petitioner on or about May 11, 1918, pursuant to a letter received by your petitioner from Franklin D. Roosevelt, duly acting Secretary of the Navy, providing in part as follows:

4 "The Department hereby awards you contract for the furnishing of 250 three-inch anti-aircraft gun mounts for the sum of \$7,860 each; * * * This award is conditional upon your furnishing affidavits that you are not a party to any existing combination in restraint of trade within the prohibition of restrictive provisions of law. A form of affidavit is inclosed for execution and return. * * *

That your petitioner duly furnished to the Navy Department the affidavit upon which the said contract No. 1498 was conditioned. That a formal contract as heretofore alleged was duly made and

signed on or about the 14th day of May, 1918, and thereafter duly delivered to your petitioner.

Fifth. That on or about September 19, 1918, your petitioner wrote to the Bureau of Ordnance of the Navy Department duly acting for and in behalf of the defendant a letter as follows:

"Sept. 19th, 1918.

Navy Dept.,
Bureau of Ordnance,
Washington, D. C.

Attention Commander Reichmuth.

Re Contract 949 for 400 3" anti-aircraft Gun Mounts and Contract 1498 for 250 3" anti-aircraft Gun Mounts.

DEAR SIR:

1. We propose to make deliveries of Gun Mounts as follows:

June	5	Shipped	December	75
5				
July	20	Shipped	January, 1919	75
August	40	"	February	75
Sept.	50	"	March	75
Oct.	60		April	75
Nov.	60		May	40
				650

2. We would respectfully ask your permission to allow us to apply all shipments on Mounts on the first contract until same is completed, and then follow with shipments on the second contract. This will greatly simplify the handling of all records and manufacturing of parts in the factory. You will note from deliveries given in the first paragraph that in the month of February the first fifteen mounts would complete contract No. 949 and the balance of 60 mounts to be delivered in February and the deliveries in the months of March, April and May would complete the second contract No. 1498 of 250 mounts.

3. Extension of Contract.—We have been seriously delayed in supplying Gun Mounts in accordance with deliveries outlined in our contracts due to conditions beyond our control, and believe that in connection with contract No. 949 specifying 400 3" anti-aircraft gun mounts that we are entitled to an extension of 90 days.

In regard to our second contract No. 1498 for 250 3" anti-aircraft Gun Mounts, we believe we are entitled to some extension due to difficulties in securing material, but at this time are not prepared to give any idea as to the amount of extension that should be allowed.

We are, in the meantime, proceeding to do everything possible to hurry this work along, and at the proper time will be pleased to discuss with you the matter of extension.

Will you kindly let us have the desired information as soon as possible?

Yours very truly,

RUSSELL MOTOR CAR
CO., INC.,
C. R. BURT,
General Manager.

That on or about September 25, 1918, the Bureau of Ordnance, duly acting for the defendant, by and through Admiral Ralph Earle, Chief of the Bureau of Ordnance, agreed to modify and extend the dates for the delivery of the gun mounts as provided for in said contract referred to as No. 1498, Exhibit "A," attached hereto and to apply all mounts on the said first contract No. 949 until same was completed, and duly wrote the petitioner as follows:

"Navy Department,

Bureau of Ordnance,

Washington, D. C., Sept. 25, 1918.

33901/373 (M2-5)0.

E. A.

Subject: Contr. 949 for 400 3" A. A. Mounts and Contr. 1498 for 250 3" A. A. Mounts.

Reference: (a) Company's letter of Sept. 19, 1918.

SIRS:

Receipt is acknowledged of the company's letter of Sept. 19, containing in the first paragraph proposed schedule of deliveries of mounts on the above contracts.

The Company's request for permission to apply all shipments of mounts on the first contract, No. 949, until same is completed, is approved.

With reference to the company's remark concerning extension of time on contract No. 949; in order that proper consideration may be made to such claims at the expiration of the contract, it is suggested that your company forward the Bureau promptly written notification of specific instances where delays beyond your control have occurred, in accordance with the stipulation mentioned in the contract.

Very truly yours,
(Signed)

RALPH EARLE.

Russell Motor Car Co.,

Via: Naval Inspec. of Ordnance,
Homestead Steel Works,
Munhall, Pa."

That on or about October 11, 1918, your petitioner duly acknowledged to the defendant the extension of time as per the following letter:

"October 11, 1918.

Admiral Ralph Earle,
Navy Dept.,
Bureau of Ord.,
Washington, D. C.

Re: Contr. 949—400 3" A. A. Mounts. Contr. 1498—250 3" A. A. Mounts.

DEAR SIR:

Your letter of Sept. 25th received and note that you will grant our request relative to shipping all of the gun mounts on the 1st contract 949 until the order is completed and follow with shipments applying on the second contract.

We thank you for granting us this concession which is entirely satisfactory.

Yours very truly,

RUSSELL MOTOR CAR
CO., INC.,
C. R. BURT,
Gen. Mgr."

That the defendant thereby duly waived and extended and modified the provisions for deliveries as contained in paragraphs or subdivisions "Second" of contracts 949 and 1498 and substituted therefor dates as contained in said letter of September 19, 1918, to the Bureau of Ordnance. That at all the times mentioned herein and in the making and answering of the communications and the arrangements and agreements with your petitioner, the said Admiral Ralph Earle and the said Commander Reichmuth were duly acting within their authority as officers and agents of the said Navy Department of the United States and for the said United States.

Sixth. That under and pursuant to and in accordance with the terms of the said contract referred to in paragraph Second above as Exhibit "A," your petitioner proceeded to expend large amounts of money, incur various obligations with sub-contractors and also arrange for and purchase large amounts of material, machinery, etc., and arrange for and hire large numbers of employees and laborers in connection with and for the purpose of carrying out its said contract.

Seventh. That on or prior to October 5th, 1918, your petitioner, in accordance with Subdivision 2 of Paragraph 13 of contract 1498, duly forwarded to said Bureau of Ordnance of the said Navy Department, progress invoice No. 1 in the sum of \$132,621.00, to which your petitioner begs leave to refer and to produce as fully as if said invoice were set out at length and which invoice was duly approved by the Navy Department on behalf of the

defendant and 80% of the amount, the sum of \$106,096.80, was duly paid by the United States on account of contract No. 1498 to your petitioner on or about October 17th, 1918.

That on or prior to November 14th, 1918, your petitioner, in accordance with Subdivision 2 of Paragraph 13 of contract 1498, duly forwarded to the Bureau of Ordnance of said Navy Department progress invoice No. 2 in the sum of \$25,874.00, to which your petitioner begs leave to refer and which invoice was duly approved by the Navy Department on behalf of the defendant and 80% of the amount, the sum of \$20,699.20, was duly paid by the United States on account of contract No. 1498 to your petitioner on or about November 25th, 1918.

That on or about November 20th, 1918, your petitioner, in accordance with subdivision 2 of paragraph 13 of contract 1498, duly forwarded to said Bureau of Ordnance of said Navy Department progress invoice No. 3 in the sum of \$38,140.00, to which your petitioner begs leave to refer, and which invoice was duly approved by the Navy Department on behalf of the defendant and 80% of the amount, the sum of \$30,512.00 was duly paid by the United States on account of contract No. 1498 to your petitioner on or about December 19th, 1918.

That on or about December 7th, 1918, your petitioner in accordance with Subdivision 2 of Paragraph 13 of Contract 1498, duly forwarded to said Bureau of Ordnance of said Navy Department progress invoice No. 4 in the sum of \$33,275.00, to which your petitioner begs leave to refer and which invoice was duly approved by the Navy Department on behalf of the defendant and 80% of that amount, the sum of \$26,620.00, was duly paid by the United States on account of contract No. 1498 to your petitioner on or about December 19th, 1918.

That on or about January 24th, 1919, your petitioner in accordance with subdivision 2 of paragraph 13 of contract 1498, duly forwarded to said Bureau of Ordnance of said Navy Department, progress invoice No. 5 in the sum of \$37,965.00, to which your petitioner begs leave to refer, and which invoice was duly approved by the Navy Department on behalf of the defendant and 80% of the amount, the sum of \$54,372.00, was duly paid by the United States on account of contract No. 1498, to your petitioner on or about February 6th, 1919.

That on or about February 12th, 1919, your petitioner, in accordance with subdivision 2 of paragraph 13 of contract 1498, duly forwarded to said Bureau of Ordnance of said Navy Department, progress invoice No. 6 in the sum of \$6,900.00 to which your petitioner begs leave to refer, and which invoice was duly approved by the Navy Department on behalf of the defendant, and 80% of the amount, the sum of \$5,520.00, was duly paid by the United States on account of contract No. 1498 to your petitioner on or about February 26th, 1919.

Eighth. Your petitioner further avers and charges that on or about November 23, 1918, the United States, duly acting by and through

T. A. Kearney, Acting Chief of Ordnance, Navy Department, on advice and at the direction of the Secretary of the Navy, revoked and cancelled the contract No. 1498 according to a letter sent to your petitioner as follows:

"Navy Department,
Bureau of Ordnance,
Washington, D. C.

Nov. 23, 1918.

36619/44 (M2-6)-0.
EA.

Subject: Contract No. 1498 for 250 3" Mark XI-2 Anti-Aircraft Gun Mounts. Cancellation of contract.

SIRS:

The Secretary of the Navy having authorized cancellation of the Company's contract No. 1498 for 250 3" anti-aircraft gun mounts, the company is hereby directed to cease all work in connection therewith not later than Dec. 2, 1918.

A just and fair settlement will be made as provided by the terms of the contract and in accordance with the statute covering 12 such cases. The details of settlement will be arranged with this Bureau.

The company is requested to submit all claims in detail at an early date. Such material as cannot be absorbed on the company's other contracts or in commercial work, should be carefully inventoried and held for such disposition as may eventually be determined upon.

Acknowledgment of receipt of this letter is requested.

Very truly yours,

T. A. KEARNEY,
Acting.

Russell Motor Car Co.,
93 Dewey Ave.,
Buffalo, N. Y."

That such revocation was without any just, legal or reasonable cause whatsoever therefor, and that the said United States and said Navy Department and its and their officers charged with the duty of carrying out said contract ever since said November 23rd, 1918, have wholly neglected, failed and refused to keep and perform said contract on its part, and have refused and still refuse to allow or permit your petitioner to keep or perform the contract on its part and have refused and still refuse to allow your petitioner to furnish or deliver any mounts or to make, realize, obtain or receive any compensation, profit or gain whatsoever therefor or to carry out the obligations on the part of the United States as provided in said contract Exhibit "A."

Ninth. Your petitioner further avers and charges that in order to carry out said contract, it became and was justly and thoroughly prepared and equipped with all of the necessary buildings, rooms, offices, apartments, machinery, apparatus, appliances, labor and employees and with means by which fully and completely duly to execute and to perform said contract and that your petitioner was then and at all times thereafter has been, fully prepared, able, willing and anxious to keep and perform said contract and all and singular its covenants, stipulations, conditions and provisions; to make, furnish and deliver all of the gun mounts and parts incidental thereto and connected therewith as provided in said contract to be made and furnished and to deliver the same at the times and in the manner agreed upon and provided for between your petitioner and the said United States as set forth herein and to otherwise do, keep and perform all of the covenants, agreements, stipulations and conditions in said contract number 1498 attached as Exhibit "A" hereto and to be kept and performed by your petitioner on its part. Your petitioner has heretofore duly complied with and performed all the conditions on its part to be performed in and by said contract number 1498 and in the performance of the said contract number 1498 it could have utilized and employed its said buildings, machinery and labor in the making and delivery of gun mounts and articles provided for in said contract number 1498 and could have thereby made, realized and received a just, fair, and reasonable compensation and lawful profit for such use and employment and thereby have become entitled to the full contract price for the said gun mounts as provided in said contract. Your petitioner further shows upon information and belief that if it had been permitted and allowed to keep and perform said contract and to make and deliver said gun mounts and material provided for in said contract, it could and would have thereby made, realized and received at the price aforesaid, a just, fair, and reasonable compensation, lawful profit and gain per gun mount therefor over and above the cost and expense of making and delivering the same and that your petitioner was deprived of the said compensation, lawful profit and gain by the United States as hereinbefore and hereinafter stated.

Tenth. That your petitioner, at the time that the said contract number 1498 Exhibit "A" attached hereto was cancelled and work thereunder stopped for and in behalf of the United States as aforesaid, was making and delivering gun mounts, sights and other material as provided in said contract and in and under said contract made and dated November 3rd, 1917, referred to above and was, therefore, familiar and knew the cost and expense necessary for the manufacture of the said gun mounts. That the reasonable and actual cost to the petitioner for the manufacture and delivery of the gun mounts and sights and for its full and due compliance, with all the terms to be performed on its part of said contract No. 1498, Exhibit "A," attached hereto, would have been reasonably of the sum of in or about \$1,010,767.50 and as above stated. The full contract price

15 for the said gun mounts was \$1,965,000 as provided in said contract number 1498 and by reason of the aforesaid cancellation on the part of the defendant and its refusal to permit your petitioner to perform its said contract, on these items alone your petitioner was and is damaged in or about the sum of \$954,232.50.

Eleventh. That in addition to said items of damage and loss to your petitioner aforesaid, and in connection with the work done on this contract in supplying finished and semi-finished parts, raw materials, stationery supplies, packing and shipping, installation of machinery, miscellaneous charges and adjusting contracts with subcontractors, your petitioner was further damaged and expended at the request of and for the benefit of the United States, the sum of \$290,332.34, the details of which sum are set out in schedule attached to this petition and marked Exhibit "B" and made part and parcel thereof and to which your petitioner begs leave to refer as if set forth in full herein.

Twelfth. That your petitioner heretofore and or about the 26th day of March, 1920, the 31st day of March, 1920 and the 1st day of April, 1920, duly sold and delivered to the defendant, the United States, under the circumstances and facts hereby and elsewhere alleged in this petition and as one of the results of the cancellation of its contract No. 1498 as aforesaid, and the transactions between your petitioner and the United States relating thereto and springing therefrom, through the Navy Department and the proper officials thereof duly acting for said Navy Department and the said United states, at the request and upon the order of the said Navy Department and in accordance with instructions duly given from the Chief of Ordnance of the Navy Department who was acting under the due authority of the defendant, certain supplies, tools, jigs and fixtures, a detailed description whereof is set out in Exhibit "C" hereunto annexed and made a part hereof as if set forth in full herein, which said supplies, tools, jigs and fixtures had theretofore been purchased by your petitioner for the purpose of carrying out the said contract No. 1498 with the said United States and were duly delivered to the defendant at and for an agreed price of \$52,709.21, which said price was fair and reasonable and that by virtue of the premises, the said United States duly owes your petitioner therefor and has not heretofore paid your petitioner the said sum or any part thereof although lawfully obligated so to do.

That in accordance with the work of manufacturing the said gun mounts under said contract No. 1498, your petitioner was required to and did purchase certain machinery necessary and material for the completion of this work of the reasonable value and cost of \$81,262.00, the items of which are set forth in Schedule "D" attached to this petition and made part and parcel thereof; that said machinery was and is of no value to your petitioner for any work outside of this said contract; that your petitioner offered to sell the same to the United States, which offer was refused, and that your petitioner sold

the same on the open market and at the best terms possible for the sum of \$57,078.25, thereby causing a further loss and damage to your petitioner of the sum of \$24,183.75 by reason of the cancellation of the said contract, Exhibit "A," as aforesaid.

Thirteenth. That the total loss and damage to your petitioner by reason of the said cancellation of the said contract and the requisition, use and acquisition of the various materials, tools and appliances as hereinbefore set forth and by reason of the various matters hereinabove set forth, was the sum of \$1,321,457.80 and that no part thereof has been paid nor are there any offsets or counterclaims thereto excepting the sum of \$243,820.00 heretofore paid by the United States as above set forth and there is now justly due and owing to your petitioner from the said United States, the sum of \$1,077,637.80, for which said sum demand has heretofore been duly made upon and refused by the defendant, the United States, and the officers and agents thereof, thereunto authorized to act.

Fourteenth. Your petitioner further avers and charges that no action has been taken on its claim in Congress. That your petitioner prior to the institution of this suit and after the cancellation of the said contract duly presented to the United States, the President thereof and to the Secretary of the Navy of the United States, duly authorized to pay and make settlement for the sums to which your petitioner was and is justly entitled, acting for and in behalf of the said defendant

United States, the President thereof, and the Secretary of the Navy, its claim for damages and moneys and fair, reasonable and just compensation and profits to which it was lawfully entitled for the various items and matters hereinbefore set forth; that the said United States and the said Secretary of the Navy of the United States, acting for and in behalf of the said United States and the President thereof, pursuant to authority duly delegated to him, heretofore and on or about May 20th, 1920, determined that your claimant was only entitled as just compensation for the various matters and items hereinbefore set forth, to the sum of \$483,483.56, and so advised your petitioner in writing and in all other respects the said United States, its President and the said Secretary of the Navy denied your petitioner's claim as in this petition set forth; that your petitioner, and it alone, is the true and lawful owner of the said claim; that no assignment or transfer of the said claim or any part thereof or interest thereon has been made; that your petitioner, this claimant, is justly entitled to the sum of \$1,077,637.80 from the United States after allowing all just credits and offsets; that your petitioner, the Russell Motor Car Company, created, organized and existing as aforesaid, has at all times borne true allegiance to the Government of the United States and that it is a citizen of the United States and it has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government and your petitioner verily believes the facts stated in this petition to be true.

18a

II.

The above named claimant, the Russell Motor Car Company, for a second separate statement of its claim, respectfully shows to this Honorable Court:

Fifteenth. Your petitioner hereby repeats and re-alleges and makes a part hereof as if set forth in full herein, paragraphs or sub-divisions of this petition hereinbefore set forth numbered and entitled "First," "Second," "Third," "Fourth," "Fifth," "Sixth," "Seventh," "Ninth," "Tenth," "Eleventh," "Twelfth," "Thirteenth" and "Fourteenth."

Sixteenth. Your petitioner further avers and charges that on or about November 23, 1918, the United States, and the President thereof, duly acting by and through T. A. Kearney, Acting Chief of Ordnance, Navy Department, on advice and at the direction of the Secretary of the Navy, revoked and cancelled the contract No. 1498 according to a letter sent to your petitioner as follows:

"Navy Department,
Bureau of Ordnance,
Washington, D. C.

Nov. 23, 1918.

36619/44 (M2-6)-0,
E. A.

Subject: Contract No. 1498 for 250 3" Mark XI-2 Anti-Aircraft Gun Mounts. Cancellation of contract.

18b SIRS:

The Secretary of the Navy having authorized cancellation of the Company's contract No. 1498 for 250 3" anti-aircraft gun mounts, the company is hereby directed to cease all work in connection therewith not later than Dec. 2, 1918.

A just and fair settlement will be made as provided by the terms of the contract and in accordance with the statute covering such cases. The details of settlement will be arranged with this Bureau.

The Company is requested to submit all claims in detail at an early date. Such material as cannot be absorbed on the company's other contracts or in commercial work, should be carefully inventoried and held for such disposition as may eventually be determined upon.

Acknowledgment of receipt of this letter is requested.

Very truly yours,

T. A. KEARNEY,
Acting.

Russell Motor Car Co.,
93 Dewey Ave.,
Buffalo, N. Y."

Your petitioner in due form and manner complied with the request of the United States, the President thereof, the Secretary of the Navy and of T. A. Kearney, acting for the said Navy Department in said letter just hereinbefore set forth and submitted its claims for the various matters and items hereinbefore set forth and in 18c and by virtue of which, as just compensation, it was entitled to receive from the United States the sum of \$1,321,457.80, that the said Secretary of the Navy on or about the 20th day of May, 1920, theretofore being duly authorized and empowered to act for and in behalf of the United States and the President thereof, then and there determined that your petitioner was only entitled to receive as just compensation, the sum of \$483,483.56 on account of the cancellation of its said contract, for the materials requisitioned, acquired and used and other matters for which your petitioner asks compensation as hereinbefore set forth and so advised your petitioner in writing and that no part of said sums have been paid except the sum of \$243,820.00 as hereinabove set forth; that the said Secretary of the Navy acting for and in behalf of the said United States and the said President thereof, in determining the just compensation as aforesaid, at the sum of \$483,483.56, refused to consider and include in said just compensation to which your petitioner was and is lawfully entitled, any allowance and any compensation and any damages measured by the difference between the said contract price and the reasonable cost to your petitioner for the full performance of the said contract on its part and refused to include in said compensation any reasonable and lawful profit which your petitioner might reasonably have made if said contract had not been cancelled as aforesaid, and your petitioner had been permitted to fully carry out the same on its part, making all proper allowance and deduction 18d for the cost of the performance of the said contract. Said refusal to consider or make allowance for these said matters just hereinabove mentioned in the said determination of the said purported just compensation by the said Secretary of the Navy, duly acting for the United States and the President thereof, was and is illegal and unlawful and is unsatisfactory to your petitioner and said refusal to make any allowance and consider said items of compensation and damages as aforesaid, substantially accounts for the difference in the amount of your petitioner's claim heretofore duly presented as aforesaid, and suit whereon is brought hereby, and the amount which the said United States, the President thereof and the Secretary of the Navy, as aforesaid, purported to determine as the just compensation to which your petitioner was only entitled.

Seventeenth. That the total loss and damage to your petitioner by reason of the said cancellation of the said contract and the requisition, use and acquisition of the various materials, tools and appliances as hereinbefore set forth and by reason of the various matters hereinabove set forth, was the sum of \$1,321,457.80 and that no part thereof has been paid nor are there any off sets or counterclaims thereto excepting the sum of \$243,820.00 heretofore paid by the United States as above set forth and there is now justly due and owing to your petitioner from the said United States, the sum of \$1,077,637.80, for

18c which said sum demand has heretofore been duly made upon and refused by the defendant, the United States, and the officers and agents thereof, thereunto duly authorized to act.

Wherefore, your petitioner demands judgment against the United States in the sum of \$1,077,637.80.

RUSSELL MOTOR CAR
COMPANY,

Claimant,

By WILLIAM G. RUSSELL,

Treasurer.

STATE OF NEW YORK,

County of Erie,

City of Buffalo, ss:

William G. Russell, being duly sworn, deposes and says: I am the treasurer of the claimant corporation in this case. I have read the above amended petition and the matters therein stated are true to the best of my knowledge and belief.

WILLIAM G. RUSSELL.

Subscribed and sworn to before me this 15th day of November, 1920.

A. M. WALDOW,

Notary Public in and for Erie County, N. Y.

19

EXHIBIT A.

(All public bills for payment under this contract should include a reference to Dept. No. 1498.)

Russell Motor Car Company Contract for Two Hundred and Fifty 3-inch Anti-air Craft Gun Mounts Mark XI, Mod. 2, with Sights Mark XVI, Mod. 1 (Except Telescopes).

This contract, of two parts, made and concluded this fourteenth day of May, A. D., 1918, by and between Russell Motor Car Company, a corporation organized under the laws of the State of Delaware, and doing business at Buffalo in the State of New York, represented by the Vice-President of said company, party of the first part, and The United States, party of the second part:

Witnesseth, that for and in consideration of the payments to be made, as hereinafter provided, the party of the first part hereby covenants and agrees to and with the party of the second part as follows—that is to say:

First. The party of the first part will, at its own risk and expense, manufacture and deliver to the Navy Department, in conformity with and subject to the conditions stated in the specifications—Ordinance Pamphlets 400, 400-C, and 400-D and the drawings as listed

on sketches Nos. 6691, 6695, 6818 and 7227, which specification and drawings, hereto annexed, shall be deemed and taken as forming a part of this contract with the like operation and effect as if they were incorporated herein, two hundred and fifty (250) 3-inch anti-aircraft gun mounts Mark XI, Mod. 2, complete with sights Mark XVI, Mod. 1 (except telescopes) at \$7,860.00 each; spare parts to be furnished in accordance with list No. 8942-8 at prices to be agreed upon, which shall be based upon the manufacturers' cost records, provided that the unit value in each case shall not exceed the proportionate cost of similar part furnished in completed mount, said spare parts to be paid for upon delivery.

Such mounts (the word mount as used throughout this contract being intended to include the mount complete, with sights (except telescopes) shall be delivered free on board at the works of the party of the first part, consigned as may be directed by the party of the second part.

Second. The party of the first part will deliver the mounts required under this contract within the periods stipulated below, viz. 10 mounts on or before October 31, 1918, and additional mounts as follows:

15 November 30, 1918; 20 December 31, 1918;

25 January 31, 1919; 60 February 28, 1919;

60 March 31, 1919; and 60 April 30, 1919.

But a lien in favor of the party of the second part upon said mounts and the material on hand for use in the manufacture thereof, respectively and collectively, for all moneys paid on account thereof, shall begin with the first payment, and shall thereupon attach to the work done and the materials furnished, and shall, in like manner, attach from time to time, as the work progresses, and as further payments are made, and shall continue until it shall have been properly discharged, and said lien is, pursuant to the provisions of the act of August 22, 1911, paramount.

Third. It is hereby agreed that time is an essential feature of this contract, and that, if the party of the first part shall fail to deliver the said mounts within the periods prescribed therefor, including such extensions thereof, if any, as may be granted by the party of the second part as hereinafter provided, the party of the second part will be damaged thereby; and the amount of said damages being difficult of definite ascertainment and proof, it is hereby agreed that the amount of said damages shall be agreed upon, liquidated, and fixed in advance; and it is hereby agreed upon, liquidated and fixed, and the party of the second part shall make deductions from the price herein stipulated, at the rate of one-tenth of 1 per cent of the contract price of each mount for each day such mount shall remain undelivered after the expiration of the period prescribed for delivery hereunder, all such deductions to be made from time to time as liquidated damages from any payment or payments falling due under this contract; provided, That no liquidated damages shall be deducted for such period, after the expiration of the time or times

prescribed for delivery of the mounts, as in the judgment of the party of the second part shall equal the time that, either in the beginning or in the prosecution of the deliveries, shall have been lost on account of any cause for which the United States is re-

22 sponsible, or on account of strikes, riots, fire, or other disaster, delays in transit or delivery on the part of transportation companies, or other circumstances beyond the control of the party of the first part, but such circumstances shall not be deemed to include delays on the part of sub-contractors in furnishing materials when such delays arise from causes other than those herein specified: and provided further, That the question whether delays are due to causes herein specified shall be determined by said party of the second part.

In case any question shall arise under this contract concerning deductions for delay, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy, whose decision thereon shall be final and binding upon the parties hereto unless, within a year after notification of the amount found due by the Navy Department in final settlement hereunder, the party of the first part shall bring suit to recover any further amounts claimed to be due.

Fourth. All delays that the party of the second part shall find to be properly attributable to any of the causes for which penalties would not be deducted in accordance with the provisions of the third clause hereof, and to have been delays operating upon the delivery of the mounts within the time herein prescribed therefor, shall entitle the party of the first part to a corresponding extension of such time: provided, however, That no such delay, nor the alleged cause

23 or causes thereof, shall be considered by the party of the second part unless the party of the first part shall, at the time of the occurrence of such delay, notify the party of the second part in writing of the facts and circumstances in each case, and of the extent to which the party of the first part claims that the deliveries are thereby delayed.

Fifth. In order that all parts of the mounts to be manufactured under this contract may be interchangeable, the furnishing of jigs, gauges and templates will be governed by Paragraph One of specifications, Ordnance Pamphlets 400-C, and 400-D, the necessary patterns to be furnished by the party of the first part.

Sixth. The provisions of this contract and the conditions and requirements of the drawings and specifications hereinbefore referred to may be changed by the party of the second part, and if changes are thus made the actual cost thereof and the damage, if any, caused thereby, and the amount of the increased or diminished compensation, if any, that the party of the first part shall be entitled to receive in consequence of such change or changes, shall be estimated by the naval inspector at the works of the party of the first part, and if less than five hundred dollars (\$500) shall be determined by him, subject to the approval of the Chief of the Bureau of Ordnance; if equal to or greater than five hundred dollars (\$500) the same shall be de-

terminated by a board of not fewer than three naval officers to be appointed by the Secretary of the Navy, and the determination of said board or a majority thereof shall be subject to the approval of the said Secretary. The determination of said inspector or of said board as to the amount of the increased or diminished compensation the party of the first part shall be entitled to receive, if any, in consequence of such changes, shall, when approved by the Chief of the Bureau of Ordnance, or by the Secretary of the Navy, as hereinbefore provided, be binding upon the party of the first part, subject, however, to appeal to the Secretary of the Navy from any decision by the Chief of the Bureau of Ordnance. Provided, That no such change shall be made when the difference in cost resulting therefrom shall, in the execution of the work, exceed five hundred dollars (\$500), except on the written order of the Secretary or the Assistant Secretary of the Navy.

Seventh. If at any stage of the work prior to the completion and delivery of said mounts, the party of the second part shall find that the party of the first part is unable or fails to proceed with or to make satisfactory progress in the manufacture and delivery thereof, or if at the end of any period prescribed in the second clause hereof, including such extensions of time, if any, as shall have been granted under the fourth clause hereof, any of the mounts required within such period shall, through fault of the party of the first part, remain undelivered, then and in such case it shall be optional with the party of the second part to declare this contract forfeited on the part of the party of the first part. In case such forfeiture is declared the title to the mounts required under this contract, and to all materials on hand applicable thereto, shall forthwith vest in the party of the second part, subject, however, to rejection as hereinafter provided for; and said mounts and materials shall on demand be surrendered to the party of the second part. The Secretary of the Navy shall thereupon cause to be taken and filed a full and complete statement and inventory of all work done or commenced in, upon, or about said mounts, and of all said materials and shall cause the same to be duly valued by a board consisting of not fewer than five persons, qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which board shall proceed without unnecessary delay to examine such work and materials and ascertain and declare the fair market value thereof, the contract price being taken as the fair market value of the completed articles, and upon such examination the party of the first part may attend, by representative, and, if it so desires, by counsel, and submit such evidence as the board may deem proper.

Upon approval of the report of said board by the Secretary of the Navy, the party of the second part may proceed to complete according to the contract, with such changes as may be found necessary or desirable, in such manner and by such means as it may deem advisable, all the mounts required under this contract. Should the total cost of the work, making due allowance for authorized changes

therein, exceed the contract price, the difference shall be charged to the party of the first part, who covenants and agrees to pay the same on demand. Should such cost be less than the contract price, the party of the first part shall be paid the amount found by the board mentioned above to be the value of the work done and material provided by the party of the first part, less previous payments to it and any other credits in favor of the party of the second part hereunder: Provided, That no allowance shall be made for profit that the party of the first part might have made by completing the work or for any excess of the contract price over the final total cost of the work; and that the party of the second part may before payment require satisfactory evidence that there exists no liens or rights in rem against the mounts or any part thereof or any materials incorporated thereon.

In case the party of the second part should, however, decide not to proceed with the completion of said mounts or any of them, the same shall be rejected and the party of the first part shall thereupon and upon notice thereof in writing be justly indebted to the party of the second part as and for liquidated and ascertained damages in a sum equal to the aggregate amount of all payments theretofore made to it for or on account thereof, and agrees to refund said amount on demand, and that the party of the second part shall and may hold as collateral security for such refund, said mounts or so much thereof as shall have been completed and all materials on hand applicable thereto.

Eighth. Notwithstanding any license the department may be held to have by reason of the provisions of the act of Congress entitled

“An act to provide, additional protection for owners of patents of the United States, and for other purposes,” approved June 25, 1910, to use patented inventions the contractor will hold and save the department harmless from and against all liability, and all and every demand or demands of any nature or kind heretofore made or that shall hereafter be made for or on account of the adoption of any plan, model, design, or suggestion, or for or on account of the use of any patented invention, article, or appliance that has been or may be adopted or used in or about the manufacture or production of the articles or materials, or any part thereof, to be furnished under this contract, and the contractor will not urge or claim the terms of said act or any interpretation thereof as a release from or waiver of the force or the effect of the foregoing stipulation, with the exception, however, of such patented inventions, articles, or appliances, if any, as may be incorporated in the designs, drawings, or specifications of the mounts to be manufactured hereunder which are to be furnished by the party of the second part, full responsibility as to which is assumed by the United States.

Ninth. Should any mount fail in the firing test it must be replaced within a reasonable limit of time, to be determined by the party of the second part, subject to deductions for delays already accrued thereon, or which may accrue after the expiration of the ex-

tended time for replacing the mount; and the rejected mount may be removed at the expense and risk of the party of the first part who will also reimburse the Government for any expense of transportation that may have been incurred thereon.

28 Tenth. This contract shall not, nor shall any interest herein, be transferred by the party of the first part to any other person or persons; and in the performance of this contract no persons shall be employed who are undergoing sentences of imprisonment at hard labor.

Tenth (a). In addition to the ordinary precautions heretofore adopted by the contractor for the guarding and protection of its plant and work, the contractor shall provide such additional watchmen and devices for protection of its plant and property and the work in process for the Navy Department against espionage, acts of war and of enemy aliens as may be required by the Secretary of the Navy. The contractor shall, when required, report to the Secretary of the Navy the citizenship, country of birth or alien status of any and all of his employees. When required by the Secretary of the Navy, he shall refuse to employ or if already employed forthwith discharge from employment and exclude from his works any person or persons designated by the Secretary of the Navy for cause as undesirable for employment on work for the Navy Department.

Eleventh. No member of or delegate to Congress, officer of the Navy, or person holding any office or appointment under the Navy Department, is or shall be admitted to any share or part of this contract or to any benefit to arise therefrom.

29 Twelfth. Subject to the conditions enumerated in section 2 of the eight-hour law of June 19, 1912, no laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work. For each violation of this provision a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which he shall be required or permitted to labor more than eight hours upon said work, and the amount of any such penalties shall be withheld for the use and benefit of the United States from any moneys becoming due under this contract, whether the violation of this provision is by the contractor or any subcontractor. (Subject to the provisions of Executive Order No. 2559-A of March 24, 1917.)

Thirteenth. The party of the second part, in consideration of the premises, does hereby contract, promise, and engage to and with the party of the first part as follows:

1. The price to be paid for the mounts to be manufactured and delivered as aforesaid shall be the price therefor as stated in the first clause of this contract.

2. Payment under this contract shall be made as follows, viz.: partial payments from time to time as the work progresses, in accordance with a schedule to be submitted by the contractor and approved by the Bureau of Ordnance, provided that from the last payment or payments becoming due hereunder there shall be reserved the sum of ten thousand dollars (\$10,000).

3. No payment shall be made except upon bills certified by the inspector in such manner as shall be directed by the Chief of the Bureau of Ordnance, whose final approval of all bills thus certified shall be necessary before payment thereof.

4. All warrants for payments under this contract shall be made payable to the party of the first part or its order.

5. When a payment is to be made under this contract as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require evidence satisfactory to him to be furnished by the party of the first part, showing what, if any, liens or rights in rem of any kind against said mounts or the material on hand for use in the construction thereof have been or can be acquired for or on account of any work done or material already incorporated as a part of said mounts, or on hand for that purpose; but it is hereby further stipulated, covenanted and agreed, by the party of the first part for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said mounts, and this contract is upon the express condition, that no lien or rights in rem of any kind shall lie or attach upon or against said mounts, or the materials therefore, or any part thereof, or of either, for or on account of any work done upon or about said mounts, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the department.

6. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim to receive the amount reserved, as aforesaid, or so much thereof as it may be entitled to, on the execution of a final release to the United States, in such form and containing such provisions as shall be approved by the Secretary of the Navy, of claims against the United States arising under or by virtue of this contract.

Fourteenth. If any doubts or disputes arise as to the meaning of anything in this contract or in the drawings or specifications aforesaid, or if any discrepancy appear between said drawings or specifications and this contract, the matter shall be at once referred to the Secretary of the Navy for determination; and the party of the first part hereby binds itself to abide by his decision in the premises.

Fifteenth. This contract having been awarded, conformably to restrictive provisions in the Naval Appropriation act of March 4,

1917, upon the express understanding that the party of the first part is not a party to any existing combination or conspiracy to monopolize the interstate or foreign commerce or trade of the United States or the commerce or trade between the States and any Territory or the District of Columbia in structural steel ship plates, armor, armament, or machinery, and the party of the first part having furnished the Secretary of the Navy with an affidavit to this effect, it is hereby further covenanted and agreed, and this contract is upon the express condition, that in case it be ascertained at any time after the signing hereof that false representations were made in said affidavit with respect to the requirements referred to above of said statute, this contract may be annulled in whole or in part by the Secretary of the Navy at his discretion.

In witness whereof, the respective parties hereto have hereunto set their hands and seals the day and year first above written.

RUSSELL MOTOR CAR COMPANY,
By T. A. RUSSELL,

Vice Pres.

THE UNITED STATES, [SEAL.]
By F. D. ROOSEVELT,

As Acting Secretary of the Navy.

Attest:

[SEAL.] J. W. WIDDUP.

Signed and sealed in the presence of
GRAHAM EGERTON,

Solicitor.

As to F. D. Roosevelt,

Acting Secretary of the Navy.

33 Ordnance Pamphlet No. 400.

Department of the Navy,

Bureau of Ordnance.

*General Specifications for the Manufacture and Inspection of
Ordnance Material for the United States Navy.*

April, 1917.

*General Specifications for the Manufacture and Inspection of
Ordnance Material for the United States Navy.*

1. Intention.—It is the declared and acknowledged intention and meaning of this specification to provide and secure ordnance material as specified in the contract.

2. Contract.—The contract covering the work to be done will be based upon this specification and the plans to which the contract refers will be attached to it and form a part thereof.

3. Omissions, misdescriptions, and discrepancies.—The omission from this specification, or other papers attached thereto and forming a part thereof, or the misdescription of any details of the work the proper performance of which is necessary fully to carry out the intention hereinbefore expressed, shall not operate to release the contractor from performing such work, but all work shall be fully and properly performed without additional expense to the Government in the same manner as if fully and correctly shown and described by this specification and required in and by the contract accompanying this specification. Should any discrepancy exist between plans and specification, or any part of the specification or plans, or should the language of any part of the specification be ambiguous or doubtful, the Bureau of Ordnance shall decide as to the true intent and meaning thereof.

4. Oral Modifications.—It must be distinctly understood that no oral statement of any person whomsoever shall be allowed in any manner or degree to modify or otherwise affect the terms of this specification or of the contract for this work.

5. Changes.—The Chief of the Bureau of Ordnance reserves the right to make such changes in the specifications or plans as he may deem necessary or advisable in order fully to carry out the intention hereinbefore expressed. Any change in the specification or plans determined upon by the Chief of the Bureau of Ordnance shall be fully described and stipulated to the contractor in writing and shall be agreed to and be performed by the contractor in accordance with the terms of the contract.

6. Plans.—The necessary plans fully and completely to carry out the intention of this specification will be furnished the contractor by the Government or will be furnished by the contractor and approved by the Government, and must be considered as part of this specification and of the contract, in which reference to the plans will be specifically made. The figured dimensions on these plans must not be deviated from to an extent greater than the allowed tolerances. When no tolerances are stated on the drawings, or in the specification, the parts must be finished within the reasonable limits of good workmanship.

7. Whenever, during the manufacture of the guns and other articles, there is any departure from the standard plans approved by the Bureau, arising either from correction of errors or for manufacturing reasons, blue prints or corrected plans will be furnished by the bureau, or by the contractor, according to whether the work is done from Bureau plans or contractors' plans.

No departure from standard plans, either in regard to prescribed dimensions or nature of material, will be allowed without the Bureau's express authority.

8. Inspection.—The Bureau shall have the right to keep at the works where ordnance material is being manufactured agents or inspectors, who shall have free access to all parts of the works and who

shall be permitted to witness all the processes of manufacture, and to examine all the contractor's records with reference to such matters.

9. The contractor shall supply the inspector, as a part of his
36 contract, with suitable office room, and with such plain office furniture as may be necessary for the proper transaction of business. The contractor will be expected to provide suitable fireproof storage for the drawings and files of the inspector. The contractor shall furnish meals during working hours to the inspector and his assistants.

10. All information and reports, written, or oral, concerning the material, tests, processes, etc., and all assistance that the inspectors may require from the contractor or his employees, shall be rendered as a part of his contract.

11. A statement of work to be commenced and in progress each day must be furnished to the chief inspector if required by him. The inspector shall keep in touch with the progress of manufacture noting any marked delays. Whenever material is ready for inspection, reports shall be made on approved forms. In addition, written reports indicating all the treatments given the material shall be made when ingots are cast or when forgings are finished.

12. Inspections without notice may be made at any time by the inspectors; but the inspectors will use discretion and not interfere unnecessarily with the progress or control of the work.

13. The contractor shall at all times render such assistance to the inspectors as the latter may require in the prosecution of their duties as they understand them.

37 14. The inspector will decide, in the first instance, as to the results of all official tests. If in doubt he shall refer the matter to the Bureau.

15. The obligation is upon the contractor to satisfy the inspector as to the correctness of all information, records, reports, gauges, methods and tests, and in accordance with the terms of the contract.

16. If the inspector considers that any of the work is not in accordance with the contract he will so inform the contractor at once, and immediately thereafter in writing give his reasons for so doing, both to the Bureau and the contractor. After the oral notification any work done by the contractor on the material in question — be at his own risk.

17. Except as hereinafter provided, all tests, measurements, etc., shall be made at the expense of the contractor, under the observation and supervision of the inspectors, and with the contractor's gauges and instruments, except in the cases where such gauges or instruments are provided by the Bureau. The inspector shall have the right to verify all testing or gauging instruments at any time.

18. Identification Marks.—Marks of identification and inspection will be retained or replaced to show on finished forgings or large castings. In addition to the manufacturer's forging identification marks, an identification mark shall be placed on the forging or casting at the time that either is accepted, and subsequently to the test for physical and chemical properties. This mark shall be carried on the forging or casting until completion, transferring from time to time as may be found necessary. The contractor shall also stamp each completed detailed part with its "identification stamp," as called for on the drawings, and each assembled unit or article with its "description method of marking," as called for by the standard method of marking drawings.

19. All machined work must be examined by the agents of the contractor for workmanship and material, and found to be up to the contract standard before it is submitted to the inspector.

20. The contractor must consult the inspector as to the seriousness of any defect which may have developed during manufacture, and call his attention to such defects at the time they are noted. Detail inspection of any part entering into an assembly should not be made until the assembly is completed.

21. Lots of machined work will be submitted with the gauges and instruments used in the contractor's inspection, and if these gauges are not satisfactory the Bureau (at its own expense) may provide and use any others.

22. The inspector may at any time reject finished or unfinished work for defects of material or workmanship and no rejected material shall be embodied in articles to be furnished the bureau, nor shall again be submitted for acceptance, except by consent of the inspector. Material rejected on account of defective workmanship shall be replaced at the contractor's expense.

23. The measuring instruments and gauges used by the contractor must be adequate to the work and the best of their respective kinds. They will be verified by the inspector before being used and at other times as necessary. The measuring instruments must read to at least one-thousandth of an inch when so required by the specifications or drawings for the parts to which they apply.

24. While the maintenance of a standard temperature during measurements is not required, precautions should be taken to avoid large deviations from 70 degrees F. While measuring the work and checking the gauges the temperature of both gauges and work should invariably be the same. The temperature should be uniform throughout all measurements.

25. Material and Workmanship.—The material for all parts shall be as specified on the plans, and of the best quality, and so treated as to be suitable and efficient for the purposes intended. All material must comply with the bureau's specifications. If required

by the inspector, test specimens of standard dimensions must be supplied at the contractor's expense for the purpose of exhibiting the quality of any material being used. No material shall be used which has not been passed by the bureau's inspector as suitable.

26. During the progress of the work all material will be subject to inspection for defects of material or workmanship, and
40 all finished articles will be rigidly inspected for defects of any sort in material, workmanship, fit, or efficiency.

[U. S. Seal.]

RALPH EARLE,

Chief Bureau of Ordnance.

RUSSELL MOTOR CAR COMPANY.

Navy Department,
Bureau of Ordnance,
April, 1917.

Attest:

J. W. WIDDUP.

Ordinance Pamphlet No. 400-C.

Specifications for the Manufacture of Deck Mounts for the United States Navy.

(Supplementary to General Specifications, Ordnance Pamphlet No. 400.)

March, 1917.

Specifications for the Manufacture of Deck Mounts for the United States Navy.

(Supplementary to General Instructions, Ordnance Pamphlet No. 400.)

41 1. Interchangeability.—In order to secure interchangeability of the different parts of the mounts and their appurtenances, the contractor shall, at his own expense, procure all necessary gauges and templets, and such gauges and templets shall be approved by the inspector prior to their use. One complete set of these gauges and templets shall become the property of the Government on the completion of the contract. The contractor shall use all necessary jigs to insure this interchangeability, and it shall be the duty of the inspector to see that these provisions are complied with. Should it be desired to secure interchangeability with mounts manufactured by the Government, the right is reserved to furnish any or all gauges and templets at the discretion of the Government, and when such gauges and templets are furnished they shall be used by the contractor.

2. Assembled units; Slides.—(a) The trunnions on the slides must be accurately turned so that they will fit the approved gauges;

the axis of the trunnions must be in perfect alignment and be at right angles to and intersect the axis of the slide. A gauge similar to that used by the Government should be used by the inspector to test the accuracy of the machining of the trunnions. The finished bore of the slide must be a true cylinder whose axis is at right angles to and intersects the axis of the trunnions.

(b) The gun keyway on the inside surface of the bore of the slide must have its edges parallel to the axis of the bore of the slide.

42 (c) The axis of each recoil cylinder and spring cylinder must be parallel to the axis of the bore of the slide and located with respect to the vertical and horizontal planes passing through the axis of the slide as specified on the drawings.

(d) The bores of the recoil cylinders, the diameters of the pistons, the piston rods, the diameters of the throttling rods, or the rifling of the recoil cylinder, the diameters of the counter recoil plungers, and the holes for the same must be exactly as called for on the drawings, as very slight variation from the specified sizes would considerably change the functioning of the recoil or the counter recoil of the gun.

(e) The recoil and spring cylinders should be carefully inspected to see that all borings and chips, or other foreign material have been removed before the pistons, spring disks, springs, etc., are assembled and the cylinder heads secured in place. The recoil springs should be washed with lye and well covered with vaseline before installing in the spring cylinders.

(f) No recoil springs should be passed by the inspector that do not conform in every respect with the detail drawings of the springs and the bureau's specifications for recoil springs.

(g) The inspector must examine the detail parts of the recoil system and compare them with the drawings to see that the full recoil of the gun can be obtained. The springs and separating disks must not bring up solid when compressed from their initial position an amount equal to the full recoil of the gun.

43 (h) The bearing surfaces to which the sight bracket are attached must be located by gauge exactly parallel to the bore of the slide and at right angles to the axis of the trunnions. The bolt holes for securing sight brackets to slide must be drilled from the sight brackets using them as gauges.

(i) The bores of the air compressor cylinders, the diameters of the pistons, piston packing rings, piston rods, the valves, etc., must be accurately machined and finished so as to fit or function without leakage of air. (Provided such air compressors are to be supplied with the mount.)

(k) Test Pressures.—The space in the recoil cylinders subjected to pressure when the gun recoils must be tested with a water pressure of 3,000 pounds per square inch, and unless tested to 3,000 pounds

per square inch with the pressure side of cylinder, the space in the cylinder forward of the piston must be tested with a pressure of 1,000 pounds per square inch; under these pressures the cylinder must not show any leakage, nor the cylinder head nor stuffing-box bolts or packings show any signs of weakness.

3. Carriage.—(a) The turned bearings of the pivot and the bearing seat for the roller or ball path must be concentric and at right angles to each other. The dimensions of the bearing surfaces should be carefully measured by the inspector to see that they are machine-made to within the tolerances mentioned on the drawings.

44 (b) The bore of the trunnion bearings must be concentric and in perfect alignment with each other and parallel to a horizontal plane passing through the axis of the training rollers or balls.

(c) The surfaces to which the training-gear brackets should be attached must be located by gauge to conform strictly to drawing dimensions.

(d) The surface to which the elevating-gear brackets are attached should be located by gauge to conform strictly to drawing dimensions, from the axis of the trunnion bearing.

(e) The bolt holes in the carriage to secure the elevating and training gear brackets, etc., thereto, should be drilled from these brackets, using them as gauges.

(f) All attached parts, such as elevating and training gear brackets and supports, trunnion-bearing brackets, etc., are to be machined from the approved jigs and gauges.

(g) Trunnion Bearings.—All specially treated or hardened parts of trunnion bearings shall be tested to determine whether the proper degree of hardness as called for on the drawing has been given. All rollers or balls must be accurate as to diameters. The trunnion fulcrum should be assembled so that the cylindrical bearing surface is true with respect to the trunnion axis. The horizontal surfaces of the various parts of the trunnion bearing must be parallel to the horizontal plane passing through the axis of the trunnion.

45 Trunnion bearings should be assembled to suit the assembly marks called for on the drawing.

(h) Carriage Frictionless Bearings.—The upper and lower paths of the roller or ball bearing on which the carriage is trained must be machined and ground so as to obtain accurate bearing surfaces for the rollers or balls. The surface of each path must be true surface. The rollers or balls and their paths must be tested for hardness to determine whether the degree of hardness as called for on the drawing has been given. All rollers or balls must be accurate as to diameters.

4. Stands.—The axes of the pivot bearing and the training circle must be in alignment and at right angles to the machined face of

the base of the stand. The roller or ball bearing seat should be parallel to the machined face of the base of the stand and at right angles to the axis of the pivot bearing. The diameters of the bearing surfaces for the pivot should be carefully measured by the inspector to see that they have been machined to within the tolerance specified on the drawing and that they have not been bored eccentrically.

5. Assembly.—The contractor must assemble, for inspection, the mount complete with all its different fittings as specified in the contract before the inspector shall permit the shipment of any of the parts. With the mount completely assembled the inspector must test the training and elevating gear by training and elevating the
 46 gun through the maximum angle permitted by that training circle and the elevating arc, in order to determine whether there is any lost motion or tight places existing in the gearing that need further adjustment or fitting. When thus assembled the mount should be carefully inspected for general finish and appearance, the hand elevating gear and trunnion adjustment should be tried out, and the whole mount inspected to see if all oil holes, oil-hole covers, and oil cups as called for on the drawings have been supplied and that all "assembly marks," "method of marking," and name plates have been shown or attached on the respective parts of the mount as called for on the drawings.

6. General.—The Government reserves the right to require the contractor to assemble each slide, fitted complete with all attachments, disks, pistons, rods, etc., shield plate, if any, and sight, assembled with the gun and breach mechanism of the mark for which the mount is designed, loaded with service charge and projectile, and mounted on its trunnion knife-edge bearings, to determine whether the designed center of gravity of the gun and oscillating parts is vertically below the axis of the trunnions when the gun is level. In making this test permission may be given by the inspector to substitute suitable weights, properly located, to take the place of any of the attachments of the slide that may not have been completed at the time.

7. Final Inspection.—Before final acceptance the Government reserves the right to require that each mount, with its fittings
 47 complete, must stand a satisfactory proof test at the Naval Proving Ground. The Government further requires that the contractor shall replace any part or parts of the amount or its appurtenances which shall fail, under service conditions, within one year from date of its installation aboard ship, provided that it can be shown that the material of the part or parts were defective and not in accord with the Government specifications.

8. Shipping.—All parts that are to be painted as called for on the drawings shall be painted by the contractor and allowed to dry before shipment. All finished parts not painted are to be made clean and bright, and well rubbed and covered with vaseline or white lead

and tallow to protect them from rust or injury in transit, and delivered f. o. b. cars, as the bureau may direct.

RALPH EARLE,
Chief of Bureau of Ordnance.

Navy Department, Bureau of Ordnance, March, 1917.

Attest:

[SEAL.] J. W. WIDDUP.

48

Ordnance Pamphlet No. 400-D.

[SEAL.]

Department of the Navy,
Bureau of Ordnance.

Specifications for the Manufacture of Sights for the United States Navy.

(Supplementary to General Specifications, Ordnance Pamphlet No. 400.)

March, 1917.

Washington: Government Printing Office: 1917.

Specifications for the Manufacture of Sights for United States Navy.

(Supplementary to General Specifications, Ordnance Pamphlet No. 400.)

1. Interchangeability.—In order to secure interchangeability of the different parts of the sights and their appurtenances, the contractor shall, at his own expense, procure all necessary gauges and templets, and such gauges and templets shall be approved by the inspector prior to their use. One complete set of these gauges and templets shall become the property of the Government on the completion of the contract. The contractor shall use all necessary
49 jigs to insure this interchangeability, and it shall be the duty of the inspector to see that these provisions are complied with. Should it be desired to secure interchangeability with sights manufactured by the Government the right is reserved to furnish any or all gauges and templets at the discretion of the Government, and when such gauges and templets are furnished they shall be used by the contractor.

2. Workmanship.—All the workmanship on the sights shall be of a character and accuracy required of instruments of precision. All bearing surfaces will be given the same high grade of accurate finish as is used in the manufacture of gauges. There must be no lost

motion whatever existing between the moving parts of the sight, and it must be possible to operate the sight through its complete angles of elevation and azimuth adjustments, etc., without excessive effort, due to the parts being too tightly assembled or due to their surfaces not having the high grade of finish called for.

3. The axis of the pivot about which the sight moves in elevation must be exactly at right angles to a vertical plane passed through the sword bar. The curved inside surfaces of the sword bar and those of the sword-bar bearing in the sight bracket must be concentric with the axis of the pivot about which the sight moves in elevation. The sides of the sword-bar bearing and the sides of the sword bar must be exactly parallel to each other and in a plane at right angles to the pivot about which the sight bar moves in elevation.

50 The upper and lower surfaces of the azimuth head and its bearing must be parallel to each other and perpendicular to the vertical axis of pivot about which the sight is set in azimuth. The center from which these curved surfaces have been laid off must be in alignment with the axis about which the sight is set in azimuth. The surfaces of all the sight brackets that secure to the gun slide and their bolt holes are to be machined from approved jigs.

4. Graduations.—The sight graduations, with their respective markings, must be most carefully spaced, cut and stamped on the various dials and drums, strips, etc., in strict accordance with the drawings of the graduations. After the sight has been assembled as hereinafter stated, the elevation graduations on the sight bar and those on the range dial should be carefully checked with each other to see that they read exactly alike when the sight is set in elevation corresponding to range readings on one or the other of these graduations.

5. Assembly; Shop Inspection.—The contractor must assemble, for inspection, each sight, complete with all fittings as specified in the contract, on a suitable shop mounting, before the inspector shall permit the shipment of any of its parts. When thus assembled the sight must be carefully inspected for general finish and appearance, and it must be operated in elevation and azimuth to test for lost motion or excessive tightness of gears or bearings, in order that any necessary fitting or further adjustment may be made. The
51 telescope holders must fit accurately the approved gauge. The oil holes, oil hole covers, and oil cups, as called for on the drawings, must be supplied; all "assembly marks," the method of marking, and the name plates must be shown on or attached to the various parts of the sight as called for on the drawings.

6. Shop Test.—The sight should also be tested to determine the accuracy of the alignment and parallelism of the telescope holders. This can be done by placing a vertical target on some suitable rigid wall or other surface at least 100 feet in front of the sight and perpendicular to the axes of the line of sight of the telescopes when the sight is level. Describe on this target two parallel vertical lines whose

distance apart equals the distance between the center lines of telescopes and intersect these two lines by a horizontal line or lines representing the horizontal plane or planes passed through the center of the telescopes. To test the parallelism of the telescopes, locate the sight in such relation to the target that the line of sight of both telescopes will intersect the intersections of the horizontal line and the two vertical lines on the target. Move the sight slowly in elevation keeping the eye to one of the telescopes to see that the line of sight follows this vertical line on the target. Then check the other telescope without moving the sight in azimuth to see that its line of sight follows its vertical line on the target. Bring the sight back to the level position with the line of sight bearing on the intersections on the target and move the sight to extreme right and left azimuth, observing the horizontal line of the target through the telescope to see that the movement in azimuth of the sight is exactly at right angles to its movement in elevation.

52 In order to test the azimuth gear for lost motion, move the sight well to the right and slowly bring it back until the vertical wire in the telescope is exactly on the vertical line of the target, being careful not to reverse the motion of the azimuth gear. When the vertical line in that telescope is just on the vertical line of the target make a note of the deflection reading on the azimuth plate. Then run the sight well over to the left and slowly bring it back (without reversing the motion of the azimuth gear) until the vertical wire in the telescope is again just on the vertical line on the target. Make a note of the reading in deflection on the azimuth plate. If the reading taken when coming from the right is the same as when coming from the left, there will be no lost motion in the azimuth gear. Test for lost motion in elevation in a similar manner; that is, run the sight well above a horizontal line on the target and then bring the sight slowly down until the horizontal wire in the telescope exactly touches the horizontal line on the target. Make a note of the reading in elevation. Then starting from a point well below slowly bring the sight up until the wire in the telescope just touches the horizontal wire on the target, and make a note of the sight reading again. If these two readings do not agree, it will probably be due to a lag in the sight caused by lost motion or binding in the gear.

53

7. Final Inspection.--Where the contractor is manufacturing at the same time and under the same contract both sights and the mounts to which they are to be attached, the inspector must require the contractor to completely assemble at least one of the sights on one of the completely assembled mounts. When thus assembled the sight can be inspected according to "Instructions on inspecting and testing sights," given in Ordnance Pamphlet No. 346, dated June 29, 1910. Before the final acceptance of the sight the Government reserves the right to require the sight and its fittings complete assembled on the mount for which it has been designed to stand a satisfactory proof test at the Naval Proving Ground. The Government further requires that the contractor shall replace any part or parts of the sight or its fittings which have failed, under service con-

ditions, within one year from date of its installation aboard ship, provided that it can be shown that the material of the part or parts were defective and not in accord with the Government specifications.

8. Shipping.—All parts that are to be painted as called for on the drawings shall be painted by the contractors and allowed to dry before shipment. All finished parts not painted are to be made bright and clean and well rubbed and covered with vaseline or white lead and tallow and carefully packed to protect them from rust or injury in transit and delivered f. o. b. cars, as the bureau may direct.

[U. S. Seal.]

RALPH EARLE,

Chief Bureau Ordnance.

Navy Department, Bureau of Ordnance, March, 1917.

G. E.

RUSSELL MOTOR CAR CO.

Attest:

J. W. WIDDUP.

EXHIBIT B.

Finished parts	\$50,158.35
Semi-finished parts	11,132.40
Raw Materials	132,813.28
Office Supplies	1,209.48
Sub-Contractors' Claims	78,388.71
Packing, Shipping, etc.	1,427.00
Equipment and Installation.	12,195.70
Miscellaneous Expense	3,007.42

\$290,332.34

55 Sheet #1.

Finished Parts on Contract #1498 Claim with 300% Burden Based on Cost of Last Orders.

Drawing & part.	Name.	Quan. in claim.	Total cost.
28755-2	Platform R. H.	1	21.96
38083-1	Handwheel	4	41.80
38083-3	Key	15	10.38
38842-1	Housing	10	36.15
38842-7	Nut	103	17.61
		3	.33
48378-4	Trigger	33	72.01
48378-7	Bridge	28	19.04
48378-8	Insulation	32	17.41
48378-10	Screw	63	33.71
48378-11	Hinge Pin	44	27.85
48378-12	Nut	35	16.10
		25	5.10

Drawing & part.	Name.	Quan. in claim.	Total cost.
48378-13	Insulation	48	12.82
48378-16	Screw	22	9.24
48378-18	Screw	217	47.83
		283	57.79
49105-2)			
49156-3)	Cover	35	73.99
49105-3	Bushing	18	17.30
49105-4)			
49156-6)	Bushing	37	52.39
49106-1	Platform Bracket	1	11.53
49106-2	Supporting Pin	71	437.36
49107-1	Train Cir. Cover.....	1	19.83
49107-2	Train Cir. Cover.....	1	27.26
49108-1	Cover Plate	266	8,735.97
49110-2	Screw Bolt	3,493	3,398.69
56			
49154-1	Bracket	1	61.52
49154-2	Key	34	116.59
49154-4	Adj. Nut	26	972.40
49154-5	Worm Cover	33	183.45
49154-6	Bevel Gear	40	122.80
49154-7	Bushing	18	38.00
49154-8	Bushing	16	17.01
49156-1	Bracket	5	219.99
49156-2	Bracket Cover	56	115.02
49156-5	Bushing	14	11.38
49156-7	Bushing	18	28.57
49156-8	Bolt	31	14.04
49158-4	Bevel Gear	8	40.30
49158-7	Bevel Gear	12	45.67
49158-8	Train Worm	31	213.28
49158-9	Key	16	45.78
49158-10	Key	54	40.61
49158-11	Key	6	5.50
49158-12	Key	132	155.50
49159-1	Recoil Cylinder	2	320.00
49159-3	Cyl. Head Fow'd.....	2	100.23
49159-5	Counter Recoil Cyl.....	1	13.73
49159-8	Collar	3	21.33
49159-9	Securing Bolt	13	65.88
49850-1	Adjusting Ring	39	3,233.88
49850-2	Outer Ball Race.....	3	214.62
49850-3	Inner Ball Race.....	4	205.38
49885-1	Elevating Worm Shaft.....	3	21.40
49885-2	Handwheel Shaft	70	164.23
Total			\$20,029.62

Sheet #2.

Drawing & part.	Name.	Quan. in claim.	Total cost.
49885-3	Elev. W. W. & P. Shaft.....	90	804.60
49885-4	Vert. Train Shaft.....	9	72.41
57			
49885-5	Train Worm Shaft.....	3	32.81
49885-6	Screw	41	123.12
49897-1	Liner Fow'd	72	1,470.96
49897-2	Liner Rear	44	1,006.68
49897-3	Trun-ion Bushing	25	106.40
49897-4	Rivet	42	10.16
50052-1	Upper Lever	95	100.89
50052-2	Bracket	2	1.88
50052-3	Lower Lever	66	39.86
50053-2	Lever S. B.....	3	8.36
50053-4	Link	200	242.40
50053-5	Lever Support	5	12.95
50053-7	Lever	30	12.03
50053-8	Plunger	13	3.54
50053-9	Pin	265	142.55
50053-10	Rivet	29	.29
50053-11	Nut	63	12.47
50070-1	Equal Lever	30	126.57
50070-2	Vert. Lever	89	56.60
50070-5	Plug	160	87.20
50070-6	Sear Lever Rod Buffer.....	34	15.57
50070-7	Sear Lever Rod.....	15	26.67
50070-10	Pin	12	11.56
50070-11	Pin	44	.44
50070-12	Screw Bolt	48	23.18
50496-2	Bushing	140	335.72
50496-3	Bushing	1	2.54
51008-1	Platform R. H.....	2	45.18
51010-1	Slide	1	283.69
51010-2	Cyl. Cap.	8	1,652.40
51010-3	Dowel Pin	147	19.40
51010-4	Dowel Pin	22	4.53
51010-7	Bushing	2	1.59
51010-8	Set Screw	31	68.76
51010-9	Pin	48	.82
58			
51011-1	Arc Bracket	3	170.77
51011-2	Arc	4	271.18
51011-3	Stop	19	57.76
51011-4	Adj. Strip	4	121.35

Drawing & part.	Name.	Quan. In claim	Total cost.
51011-5	Adj. Key	6	24.60
51011-6	Washer	17	1.00
51011-7	Pin	47	.80
51011-8)			
51011-9)	Key	27	54.20
12/Z/1-33	U. S. Std. Bolt.....	81	47.70
53230-1	Battery Box Bracket	5	15.20
55233-1	Cyl. Hd. Rear.....	1	36.50
55233-2	Stuffing Box Nut.....	11	53.80
55238-1	Cyl. Liner	3	145.44
8/Z/1000-21	Countersunk Bolt	628	257.48
8/Z/1000-30	Countersunk Bolt	335	57.96
8/Z/1104-20	Screw	34	14.00
12/Z/1-2	U. S. Std. Bolt.....	56	20.66
12/Z/1-17	U. S. Std. Bolt.....	42	11.70
12/Z/1-31	U. S. Std. Bolt.....	52	25.48
Total			8,354.80

Sheet #3.

12/Z/1-32	U. S. Std. Bolt.....	10	4.60
12/Z/1-32	U. S. Std. Bolt.....	144	77.76
12/Z/1-43	U. S. Std. Bolt.....	61	39.04
12/Z/1-62	U. S. Std. Bolt.....	110	114.40
12/Z/1-72	U. S. Std. Bolt.....	33	72.50
12/Z/2-1	Nut Plain	76	10.34
12/Z/2-2	Nut Cotter	11	1.82
12/Z/2-3	Nut Crown	39	7.96
12/Z/2-6	Nut Cotter	33	20.39
12/Z/2-9	Nut Plain	511	65.41
12/Z/2-10	Cottered Nut	112	65.30
59		16	10.86
12/Z/1-14	Cottered Nut	65	58.05
		259	90.39
12/Z/2-15	Crown Nut	54	17.60
12/Z/2-26	Cotter Nut	325	132.28
12/Z/4-92	Set Screw	18	14.36
		82	27.88
12/Z/4-93	Set Screw	37	11.77
12/Z/5-20	Lock Screw	68	23.66
12/Z/5-30	Lock Screw	203	45.27
12/Z/5-34	Lock Screw	36	4.82
12/Z/5-80	Cap Screw	39	39.08
		150	28.35
12/Z/5-90	Cap Screw	29	4.03
		500	185.00
		352	78.85

Drawing & part.	Name.	Quan. in claim.	Total cost.
12/Z/5-92	Cap Screw	7	10.12
12/Z/6-12	Cap Screw	30	24.24
12/Z/6-21	Cap Screw	106	51.30
49878-9	Def. Plate	59	24.13
49918-3	Pivot Pin	42	113.99
50795-3	Rivet	45	9.32
8/Z/1000-24	Ctsk. Bolt	156	47.42
8/Z/1000-40	Ctsk. Bolt	32	10.08
12/Z/2-16	Crown Nut	66	36.83
12/Z/4-101	Set Screw	65	16.64
12/Z/7-70	Mach. Screw	64	10.50
49109-2	Bushing	69	2,527.75
		140	5,006.54
12/Z/2-21	Nut Plain	292	113.00
		35	18.69
Total			\$9,272.37

60

Sheet #4.

38842-10	Cotter Pin	500	1.79
		1,090	3.85
48378-9	Spring	303	9.47
49108-3	Felt Washer	93	1.90
		250	7.50
49154-3	Liner	214	5.05
49159-10	Packing	278	83.40
		35	10.50
49159-11	Packing	275	72.54
		50	13.75
49159-12	Packing	336	10.58
49159-13	Packing	24 ⁵ / ₈ #	22.65
49159-13	Packing	27 #	24.30
49850-4	Balls	16,150	3,385.69
49850-4	Balls	17,200	3,601.68
49850-4	Balls	700	148.95
49850-4	Balls	2,316	484.28
50070-3	Spring	229	9.33
50070-8	Spring	53	2.55
50070-8	Spring	175	8.27
55234-1	Outer Spring	32	412.96
55234-1	Outer Spring	23	297.16
55234-2	Inner Spring	32	412.96
55234-2	Inner Spring	23	297.16
1591-1	Washer	74	111.89
1591-1	Washer	153	231.03
1591-1	Washer	160	233.60
1591-1	Washer	67	97.62

Drawing & part.	Name.	Quan. in claim.	Total cost.
1591-2	Washer	343	535.08
1591-2	Washer	15	23.55
1591-2	Washer	238	371.28
1591-2	Washer	232	350.32
1591-2	Washer	327	509.79
1591-2	Washer	117	176.67
61			
8/Z/1104-14	Len Washer.....	125	1.19
8/Z/1104-14	Len Washer.....	334	1.06
12/Z/3-1	Taper Pin.....	275	2.94
12/Z/3-1	Taper Pin.....	10	.07
12/Z/3-2	Taper Pin.....	1,375	16.50
12/Z/3-2	Taper Pin.....	128	1.05
12/Z/3-3	Taper Pin.....	7	.06
12/Z/3-3	Taper Pin.....	1,100	14.52
12/Z/3-4	Taper Pin.....	2,500	36.25
12/Z/3-4	Taper Pin.....	141	1.41
12/Z/3-5	Taper Pin.....	275	4.32
12/Z/3-5	Taper Pin.....	15	.16
12/Z/3-24	Taper Pin.....	275	6.60
12/Z/3-24	Taper Pin.....	31	.51
12/Z/3-25	Taper Pin.....	266	6.97
12/Z/3-34	Taper Pin.....	550	24.86
12/Z/3-34	Taper Pin.....	60	2.15
12/Z/3-40	Cotter Pin.....	1,000	.43
12/Z/3-40	Cotter Pin.....	587	.15
12/Z/3-41	Cotter Pin.....	1,000	.48
12/Z/3-41	Cotter Pin.....	547	.16
12/Z/3-52	Cotter Pin.....	1,692	8.24
12/Z/3-52	Cotter Pin.....	2,621	12.63
12/Z/3-53	Cotter Pin.....	1,000	5.47
12/Z/3-53	Cotter Pin.....	1,117	6.05
12/Z/3-63	Cotter Pin.....	4,000	33.00
12/Z/3-75	Cotter Pin.....	1,000	1.67
12/Z/3-75	Cotter Pin.....	1,000	1.62
12/Z/3-75	Cotter Pin.....	38	.06
Total			\$12,159.68

62

Sheet #5.

12/Z/300-32	Oil Hole Cover.....	191	4.39
	Machine Screws.....	648	7.74
	Machine Screws.....	144	1.83
	Machine Screws.....	4,515	44.20
	Name Plate.....	328	106.27
	Name Plate.....	1,231	448.08
	Name Plate.....	58	16.65

Drawing & part.	Name.	Quan. in claim.	Total cost.
8/Z/1104-23	Len Washer.....	82	.35
12/Z/3-62	Cotter Pin.....	720	5.40
12/Z/3-62	Cotter Pin.....	500	3.72
12/Z/3-62	Cotter Pin.....	441	3.23
12/Z/3-63	Cotter Pin.....	2,720	22.18
12/Z/3-63	Cotter Pin.....	53	.44
12/Z/300-11	Grease Cups.....	82	10.12
12/Z/300-26	Oil Cups.....	503	90.79
12/Z/300-26	Oil Cups.....	82	14.79
49108-2	Flat Strip.....	114.8#	7.46
Total			\$787.64

Sheet #6.

Recapitulation of Finished & Commercial Parts on Contract #1498 Claim.

Sheet #1.....	20,029.62	Finished Parts.
Sheet #2.....	8,354.80	Finished Parts.
Sheet #3.....	9,272.37	Finished Parts.
Sheet #4.....	12,159.68	Commercial Parts.
Sheet #5.....	787.64	Commercial Parts.
Total	50,604.11	
Adjustment of Burden.....	445.76	
Total	50,158.35	

63

Semi-Fin. Parts in Claim 1498.

Based on 300% Cost Now Charged to Gun Mount.

Drawing & part No.	Name.	Quan. in claim.	Cost, each.	Total cost, inc. labor & burden.
38083-1	Handwheel	70	4.64	324.80
49105-3	Bushing	100	.3205	32.05
49109-1	Stand	26	212.376	5,521.78
49110-2	Standard Bolt....	504	.301	151.70
49154-4)				
49156-4)	Adjusting Nut....	278	1.78	494.84
49156-8	Bolt	24	.404	9.70
49158-2	Elev. Pinion.....	16	3.927	62.83
49158-5	Bevel Gear.....	8	4.146	33.17
49158-6	Bevel Gear.....	30	4.15	124.50
49850-3	Inner Ball Race..	24	45.89	1,101.36
49850-3	Inner Ball Race..	2	114.15	228.30

Drawing & part No.	Name.	Quan. in claim.	Cost, each.	Total cos inc. labor & burden
49850-3	Inner Ball Race..	70	22.94	1,605.80
49897-1	Liner Fw'd (Mat. only)	3	15.026	45.08
49897-3	Trun-ion Bushing.	8	2.761	22.09
50053-3	Handle	24	.766	18.38
50496-3	Bushing	19	1.685	32.01
8/Z/1000-21	Bolt	2,150	.11	236.50
8/Z/1000-21	Bolt	427	.086	36.72
8/Z/1104-9	Drain Plug.....	60	.198	11.88
12/Z/1-31	U. S. Std. Bolt....	1,174	.085	99.79
12/Z/1-32	U. S. Std. Bolt....	237	.238	67.07
12/Z/1-42	U. S. Std. Bolt....	465	.235	109.27
12/Z/2-14	Cottered Nut.....	1,898	.151	286.60
49875-2	Grad. Strip.....	129	2.459	317.21
49877-7	Handwhl. Shaft..	23	.67	15.41
64				
49878-5	Drum Disc.....	106	.941	99.75
49878-7	Handwhl. Shaft...	71	.56	39.76
49918-3	Pivot Pin (Mat. only)	198	....	47.23
Total				11,175.58
Less Adjustment of Burden.....				43.18
Total				11,132.40

Inventory of Raw Material.—Continued.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
49110-1	Train. Circle	136	13,595 "	.212 "	2,882.14
49112-1	Carriage	93	43,840 "	18.185 C	7,972.30
			10,127 "	.1725 lb.	1,746.90
			30,518 "	.18002 "	5,493.85
			31,005 "	.173 "	5,363.87
			22,887 "	.213 "	4,874.93
			9,355 "	.1824 "	1,706.35
49154-1	Train. Gear Brkt.	5	55,085 "	.18278 "	10,068.44
49164-4	Adj. Nut	522	564 "	.1816 "	102.42
			1,820 "	.478 "	869.96
49156-4	Worm Cover.	250	1,470 "	.345 "	507.15
49154-5	Bevel Gear Cover	252	792 "	.345 "	273.24
49154-6	Bushing	75	272 "	.478 "	130.01
49154-7	Bushing	116	293 "	.478 "	140.05
49156-1	Bracket	11	657 "	.21 "	137.97
49156-5	Bushing	45	189 "	.478 "	90.34
49156-6	Bushing	64	284 "	.422 "	119.84
49156-7	Bushing	51	90 "	.442 "	39.78
49158-3	Elevating Worm	156	503 "	.478 "	240.43
49158-5	Bevel Gear	852	3,312 "	.478 "	1,583.14
49158-6	Bevel Gear	431	2,624 "	.478 "	1,254.27
49158-8	Training Worm	199	1,718 "	.478 "	821.20
			4,757 "	.478 "	821.20

49159-3	Cyl. Head Forward.....	255	5,116	235	1,202.26
49850-2)	Outer Ball Race.....	228	3,580	205	733.90
49892-1)			6,687	204	1,364.15
			2,847	202	575.09
			3,953	338	1,336.11
49850-3)	Inner Ball Race.....	236	4,285	204	874.14
49892-2)			711	206	146.47
			1,916	205	392.78
			2,113	202	426.83
			4,359	412	1,795.91
49850-5	Stand Liner.....	2	1,453	1112	161.57
49897-1	Liner Forward.....	152	5,113	442	2,259.94
49897-2	Liner Rear.....	133	4,612	442	2,038.50
49897-3	Bushing.....	72	772	478	369.02
50052-1	Upper Lever.....	418	280	456	190.61
50052-2	Bracket.....	553	218	345	75.21
	Total.....				79,715.37

Sheet #2.

Contract 1498.

Inventory of Raw Material.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
50052-3	Lower Lever.....	419	198 lbs.	216	90.50
50053-2	Lever S. B.....	280	348 "	478	166.34
50053-3	Handle.....	503	603 "	478	288.23
50053-4	Link.....	396	127 "	206	81.58

Inventory of Raw Material.—Continued.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
50053-5	Lever Support.....	272	457 "	.478 lb.	218.44
50053-7	Lever	363	104 "	.126 ea.	45.74
50070-1	Equal Lever.....	326	918 "	.345 lb.	316.71
50070-2	Verticle Lever.....	476	162 "	.206 ea.	98.06
50070-4	Horizontal Lever.....	528	123 "	.162 "	85.54
50070-7	Sear Lever Rod.....	333	723 "	.345 lb.	249.44
50496-1	Pinion Shaft.....	101	1,675 "	.1816 "	304.18
			428 "	.173 "	74.04
50496-3	Bushing	3,360	"	.213 "	715.68
50496-2	Bushing	2,518	"	.212 "	533.82
51008-1	Platform R. H.....	428	"	.478 "	204.58
		2	19 "	.442 "	8.40
		20	1,239 "	.1816 "	225.00
			828 "	.173 "	143.24
51010-1	Slide	14	"	.1851 "	2.59
		106	"	.18002 "	2,083.01
			11,571 "	.173 "	3,075.59
			17,778 "	.213 "	2,041.82
			9,586 "	.1824 "	1,832.94
			10,049 "	.1816 "	4,809.68
			26,485 "	.212 "	2,371.22
			11,185 "	.1725 "	355.18
51010-2	Cyl. Cap.....	2,059	"	.212 "	1,242.11
		243	"	.1816 "	1,215.99

51011-2	Arc.	253
51011-4	Adjusting Strip.....	134
53230-1	Battery Box Brkt.....	173
55233-1	Cylinder Hd. Rear.....	162
55233-2	Stuffing Box Nut.....	138
48105-1	Wheel	528
49876-1	Bracket	226
49876-2	Bracket Cover.....	178
49877-1	Drum Large.....	227
49877-2	Drum Cover.....	220
49877-6	Drum Disc.....	290
49877-8	Worm Wheel.....	410
49878-1	Drum Small.....	226

49878-2	Drum Cover.....	463
49878-3	Worm Wheel.....	220
49878-5	Clamp Disc.....	201
49918-1	Pivot	11
49918-2	Guide	65
50795-2	Lamp Socket.....	668
48105-4	Pin	86'

739.50	183	4,041	739.50
3,971.64	2473	16,060	3,971.64
1,835.95	2468	7,439	1,835.95
815.72	182	4,482	815.72
155.60	1591	978	155.60
754.58	1598	4,722	754.58
402.55	1593	2,527	402.55
54.06	212	255	54.06
41.59	1816	229	41.59
757.25	25	3,029	757.25
211.28	478	442	211.28
567.70	35	1,622	567.70
2,491.25	345	7,221	2,491.25
603.06	345	1,748	603.06
1,068.55	355	3,010	1,068.55
1,573.11	6.93 ea.	261	1,573.11
662.75	345 lb.	1,921	662.75
348.80	345	1,011	348.80
536.79	478	1,123	536.79
1,157.12	5.12 ea.	125	1,157.12

773.84	lb.	2,243	773.84
183.07	"	383	183.07
94.88	"	275	94.88
26.77	"	56	26.77
143.40	"	300	143.40
108.22	ea.	190	108.22
.87	lb.	1	.87

Inventory of Raw Material.—Continued.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
50070-11)					
51010-9)	Pin	95'	6½	.46	2.99
51011-7)					
50053-8	Plunger	104'	27½	.45	12.38
51010-3	Dowel Pin	20'	13½	.39	5.27
50053-10	Rivet	74'	3½	.78	2.73
48378-10)	Screw	54'	10	.33	3.30
49876-3)					
50794-3	Pin	688'	47½	.41	19.48
	Total				43,005.70

Sheet #3.

Contract 1498.

Inventory of Raw Material.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
38842-7	Nut	34'	171 lbs.	.29	49.59
49154-3	Liner	1,247'	165 "	.43	70.95
48378-7	Bridge	25½'	3½	.765	2.68
49105-2)	Cover	586'	540 "	.315	170.10
49156-3)					
49156-2	Cover	267'	380 "	.315	119.70
48378-8	Insulation	35'	5½	.71	2.01
48378-13	Insulation	77'	10		

49875-2)	Insulation	98'	89	"	3.50	"	343.00
49878-9)	Grad. Strip	124'	205	"	.44	lb.	90.20
	Deflector Plate						
49159-5	Counter Recoil Plunger	31' 8"	778	"	.164	"	127.59
49159-9	Securing Bolt	113'	2,497	"	.164	"	409.51
49875-3	Screw Bolt	65' 11"	1,161	"	.164	"	190.40
		40' 8"	63	"	.0875	"	5.51
		18' 10"	25	"	.0875	"	2.19
49875-4	Screw Bolt	43' 6"	37	"	.07265	"	2.69
		39'	43	"	.0902	"	3.88
49877-7	Handwheel Shaft	37' 5"	39	"	.0795	"	3.10
		1,168'	2,406	"	.07265	"	174.80
49878-7	Handwheel Shaft	67'	135	"	.0617	"	8.33
49918-3	Pivot Pin	99' 8"	240	"	.07265	"	17.44
		51' 7"	175	"	.192	"	33.60
49878-8)	Shaft Collar	34' 10"	115	"	.0608	"	6.99
49877-4)		31' 2"	153	"	.192	"	29.38
49878-10)	Worm	230' 11"	683	"	.0508	"	34.70
49877-9)			1,507	"	.192	"	289.34
49158-4	Bevel Gear	85' 9"	790	"	.0623	"	49.22
49106-2	Supporting Pin	62' 6"	968	"	.20	"	193.60
49158-7	Bevel Gear	98' 7"	1,341	"	.0727	"	97.49
		33' 8"	688	"	.204	"	140.35
49775-6	Aximuth Rack	22' 7"	446	"	.0737	"	32.87
		54' 11"	722	"	.233	"	168.23
12/Z/1-2	U. S. Std. Bolt	159' 4"	1,546	"	.0714	"	110.38
		404' 8"	560	"	8.28	cwt.	46.37

Inventory of Raw Material.—Continued.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
12/Z/1-17	" "				
12/Z/1-31)	" "	448'	1,000 "	8.81	88.10
12/Z/1-32)	" "	3,307'	10,987 "	6.53	717.45
" -33)	" "				
" -38)	" "				
12/Z/1-43)	U. S. Std. Bolt				
12/Z/1-42)	" "	1,436' 7"	6,610 "	7.35	497.73
12/Z/1-62	U. S. Std. Bolt				
50795-3	Rivet	41'	315 "	7.71	24.29
49876-6	Lock Screw	78' 7"	31 "	.202	6.26
		78' 6"	30 "	7.95	2.39
12/Z/5-30)	Hlds. Lock Screw				
50070-12)	Screw Bolt	190' 5"	95 "	5.08	4.83
12/Z/5-34)	Hlds. Lock Screw				
12/Z/5-20	Lock Screw				
12/Z/4-93)	Set Screw Hlds.				
12/Z/4-92)	" "				
12/Z/5-1	Lock Screw				
8/Z/1005-4)	Collar Screw	117'	24 "	6.915	1.66
8/Z/1005-11)	Cap Screw	3,664'	2,429 "	7.69	186.79
8/Z/1000-21)	Ctsk. Bolt				
8/Z/1000-23)	" "	2,044' 10"	2,098 "	7.83	164.27
8/Z/1000-24)	" "				
8/Z/1000-30)	" "				
49897-4)	Rivet				

Contract 1498.

Inventory of Raw Material.

Draw. & pt. No.	Name of part.	Quan.	Weight.	Price.	Total cost.
12/Z/5-92)	Cap Screw	615'	651 lbs.	.192 lb.	124.99
48105-3)	Screw				
51010-3)	Dowel Pin				
50070-5)	Plug				
51010-5)	Stud Bolt				
51011-5)	Adj. Key	1,087' 8"	1,616 "	7.17 cwt.	115.87
8/Z/1000-40)	Osk. Bolt	311' 5"	498 "	.192 lb.	95.62
8/Z/1000-44)	"	3' 10"	8 "	.192 "	1.54
12/Z/6-12)	Cap Screw	155'	2,013 "	7.407 cwt.	149.10
51011-6)	Washer		318 "	7.40 "	23.53
51010-4)	Dowel Pin				
51010-8)	Set Screws				
12/Z/6-21)	Cap Screw				
		47' 3"	127 "	.192 lb.	24.38
		350' 6"	925 "	6.06 cwt.	56.06
		823' 1"	4,185 "	.192 lb.	803.52
		1,266' 8"	4,305 "	5.24 cwt.	225.58
		336' 7"	1,130 "	6.42 "	72.55
51011-3)	Stop				
49885-2)	Handwheel Shaft				
49885-4)	Vert. Train Shaft				
8/Z/1104-9)	Drain Plug	18'	76 "	6.42 "	4.88
49885-1)	Elev. Worm Shaft	36' 10"	221 "	.192 lb.	42.43
49885-5)	Train. Worm Shaft				
49876-5)	Bracket Bolt	197' 6"	1,505 "	5.03 cwt.	75.70
49885-6)	Screw	242' 5"	2,293 "	5.08 "	116.48
		35' 10"	335 "	6.89 "	23.08

RUSSELL MOTOR CAR CO. VS. THE UNITED STATES.

47

49110-2	Screw Bolt	866' 10"	9,184	"	4.15	"	381.14
49885-3	Elev. Worm Wheel & Pin. Shift	4' 4"	47	"	5.08	"	2.39
12/Z/2-1)	Nut Plain						
12/Z/2-2)	Nut Cotter	466'	646	"	9.035	"	58.37
12/Z/2-3)	Nut Crown						
12/Z/2-6)	Nut Cotter						
12/Z/2-7)	Crown Nuts	259' 8"	579	"	8.61	"	49.85
49156-8)	Bolt	682' 9"	2,291	"	8.62	"	197.48
12/Z/2-9)	Plain Nut	492' 10"	1,680	"	.192	lb.	322.56
12/Z/2-10)	Cotter Nut						
50053-11)	Nut	443'	2,024	"	8.69	cwt.	175.89
12/Z/2-14)	Cotter Nut						
12/Z/2-15)	Crown Nut						
12/Z/2-16)	Nut Plain						
12/Z/2-21)	Nut Plain	94' 8"	732	"	6.89	"	50.43
12/Z/2-26)	Nut	440' 8"	5,162	"	8.69	"	448.58
12/Z/4-101)	Set Screw	65' 7"	70	"	7.15	"	5.01
38083-3	Key	412'	777	"	8.28	"	64.34
49158-11)	Key	106' 5"	68	"	.202	lb.	13.74
49158-12)	Key	172' 5"	157	"	11.72	cwt.	18.40
49158-9	Key	33' 9"		"			
49158-10	Key	68' 3"	39	"	.203	lb.	7.92
		1,558' 8"	71	"	7.93	cwt.	5.63
			1,976	"	.202	lb.	399.15
51011-8	Key	102' 10"	131	"	8.50	cwt.	11.14
49154-2	Key	571' 3"	2,123	"	.202	lb.	

48378-11)	Hinge Pin	221'	181	"	6.585	"	11.92
48378-12)	Nut						
49875-5)	Rivet						
50052-4	Rod	1,436' 3"	2,246	"	6.05	"	135.88
49878-6	Clamp Disc	40' 5"	812	"	.20	lb.	162.40
49877-3	Clamp Disc	17' 1"	1,413	"	.28	"	395.64
55238-1	Cylinder Liner	4'	93	"	.4226	"	39.30
Total							5,356.49

Sheet #5.

Contract 1498.

Recapitulation of Inventory of Raw Material.

Sheet #1	79,715.37
#2	43,005.70
#3	4,735.72
#4	5,356.49
Total	132,813.28

Claim on Contract #1498.

250—3" A. A. Gun Mounts.

Office Supplies.

Form No.	Name.	Quan. on hand.	Price.	Total
2.	Req. on Purch. Dept.	9,000	2.50 M	22.50
3.	Receiving Report	10,000	7.125	71.25
4.	Employment Record	4,000	2.80	11.20
5.	Request for change of rate. .	3,000	1.63	4.89
6.	Production card	70,000	1.96	137.20
7.	Expense order	5,000	2.77	13.85
8.	" " office copy. .	3,000	8.333	25.00
		2,000	8.15	16.30
9.	Indirect Mat'l req.	55,000	.9285	51.07
10.	" Labor time slip.	48,000	1.00	48.00
11.	Day clock card	4,000	2.30	9.20
13.	Record of finished stock.	2,000	11.54	23.08
14.	" " raw material	1,000	9.60	9.60
15.	Final Pay Ticket.	2,000	1.50	3.00
17.	Record of employment	600	4.25	2.55
18.	Dept. communication	18,500	1.365	25.25
19.	Shipping Order	800	15.00	12.00
20.	Part record	200	12.20	2.44
21.	Shop order	4,900	3.05	14.95
22.	Req. on store.	2,000	7.30	14.60
23.	Shortage req.	6,000	4.666	28.00
		1,000	3.53	3.53
24.	Scrap Ticket	1,000	9.50	9.50
		700	5.70	3.99
25.	Repair cards	5,000	4.12	20.60
83				
28.	Pattern record card.	700	6.00	4.20
30.	Expense clock card.	24,000	1.987	47.69
31.	Stock card	5,000	4.43	21.15
		7,000	3.85	26.95
33.	Overtime pass	20,000	1.00	20.00
34.	Payroll	3,000	24.67	74.01
35.	Identification card-emp.	24,000	1.96	47.04
36.	Ret'd Material record.	1,000	4.95	4.95
38.	Equip. inc. card.	1,500	7.93	11.90
42.	Scrap record	700	11.00	7.70
43.	Production record misc.	200	3.60	.72
44.	Night clock card.	4,500	3.10	13.95
45.	Piece work production card. .	2,800	2.246	62.89

Form No.	Name.	Quan. on hand.	Price.	Total.
49.	Clock card, 1st shift plant #2	3,000	4.57	13.71
50.	Clock card 2nd shift women.	5,000	4.57	22.85
52.	" " " " men, 10,-			
	000	5,000	4.57	22.85)
		5,000	4.28	21.40)
53.	Absentee report	2,950	4.283	12.63
54.	Employment pass	4,800	2.266	10.88
56.	Claim on Trans. Co.	100	1.05 C	1.05
57.	Original req. on bond.	1,800	4.30 M	7.74
58.	Shortage req. on bond.	9,400	3.875	36.43
59.	Employees transfer slip.	1,400	2.175	3.05
60.	Application blank	300	4.20	1.26
61.	Sales shipping order.	500	16.50	8.25
63.	Final Pay voucher.	4,400	3.00	13.20
65.	Purchase order	700	17.80	12.46
66.	" " copy	300	7.375	2.21
72.	Permanent pass	500	.50 C	2.50
73.	Office pass	2,000	3.50 M	7.00
74.	Parcel pass	21,600	2.97	64.15
Forward				\$1,191.32

84 Sheet #1 A.

Inventory of Stationery.

Form No.	Name.	Quan. on hand.	Price.	Total.
Forward				\$1,191.32
75.	Visitor's pass	1,000	4.50 M	4.50
79.	Tags for scrap.	2,800	3.25	9.10
80.	Lot identification card	500	1.70	.85
82.	Receipt for tools.	500	3.00	1.50
83.	Tag—hold for approval (N) .	100	.70 C	.70
84.	" material rework (N) .	500	.70 C	3.50
85.	Change of address report.	1,000	1.50 M	1.50
86.	Naval Insp. communication			
	blk.	300	2.25	.68
91.	Accident report	500	7.25	3.63
92.	Lot identification card.	1,800	4.00	7.20
Total				\$1,224.48
Less Scrap Value.				15.00
Amount of Claim				\$1,209.48

Sheet #2.

Committments on Contract #1498.

250—3" A. A. Gun Mounts.

Sub-contractors' Claims.

	Atlas Crucible Steel Co.....	\$108.06
85	Wallace Barnes Co.....	50.04
	Canada Forge Co.....	3,008.84
	Canada Fdrs. & Forgings.....	1,106.53
	Chase Metal Works.....	1,480.21
	Cleveland Knife & Forge.....	2,778.15
	Cochrane Brass Fdy.....	4,533.34
	Jas. Graham & Co.....	502.61
	Hammond Steel Co.....	2,841.77
	National Tool Co.....	54.10
	Otis Steel Co.....	819.90
	Peerless Drawn Steel Co.....	1,870.55
	Railway Steel Spring Co.....	23,422.70
	Camden Forge Co.....	3,624.31
	Superior Steel Castings Co.....	32,187.60

Total Claims..... \$78,388.71

Sheet #3.

Claim on Contract #1498.

250—3" A. A. Gun Mounts.

Statement of Packing, Shipping, etc.

Cost to Pack & load Raw, & semi-finished materials....	\$1,286.50
Cost to Pack tools & fixtures for shipment to Navy Dept.	
Contract #1498	126.51
(Additional charge later when these are shipped.)	
Freight & cartage on steel returned from Canada Fdrs. & Forgings, Ltd., Welland, Ont.....	13.93
Total claim.....	\$1,427.00

86

Sheet #4.

Claim on Contract #1498.

250—3" A. A. Gun Mounts.

Items of Equipment & Installation.

Rearrangement & alterations of plant.....	\$4,346.82
Installation of Machinery.....	2,800.73
Installation of Electric Craneway.....	2,044.16
Chipping shed, erected for contract #1498.	\$539.41
Less salvage value.....	58.30
	<hr/>
	481.11
% used on Contract 949—50%.....	240.55
	<hr/>
Value not recovered due to cancella- tion #1498	240.56
Annealing furnace constructed for #1498..	860.61
Less salvage value.....	117.09
	<hr/>
	743.52
% used on contract 949—50%.....	371.76
	<hr/>
Value not recovered due to cancella- tion #1498	371.76
Addition to Hardening Dept. for #1498...	594.26
Salvage	98.32
	<hr/>
	495.94
% used on contract 949—50%.....	247.97
	<hr/>
87 Value not recovered due to cancella- tion #1498	247.97
Cost of moving shed for storage of material for contract #1498.....	378.94
Restaurant & restaurant equipt.:	
Total cost	6,617.18
Fair value	1,575.02
	<hr/>
Amortization	5,042.16
Applicable to Army contract, 50%	2,521.08
	<hr/>
Applicable to Navy contracts, 50%	2,521.08
30% used on #949.....	756.32
	<hr/>
Chargeable to #1498.....	1,764.76
Contract #949 charged with use of restaurant for Oct., Nov. & Dec., 120 mounts completed during this time.	12,195.70

Sheet #5.

Claim on Contract #1498.

250—3" A. A. Gun Mounts.

Statement of Miscellaneous Expense.

Premium in Bond	\$1,490
Insurance—equipment & supplies valued at \$107,159.46 for 1 year, Dec. 1st, 1918, to Nov. 30th, 1919.....	\$88.40

88

Insurance—material valued at \$220,199.04 for 10 months, Dec. 1st, 1918 to Sept. 30th, 1919	151.38
---	--------

Travelling Expense	239
Telephone & Telegrams—actual amount ap- plying #1498	304
Police & watchman services—June 15/19— Dec. 31/19.....	55
	910

Total claim	\$3,007
-------------------	---------

December 31st, 1919.

EXHIBIT C.

Summary.

Supplies, tools, jigs and fixtures delivered to the United States as follows:

March 26th, 1920, Car No. L. V. 62888.....	\$40,134.5
March 31st, 1920, Car No. D. L. & W. 33913.....	4,472.5
April 1st, 1920, Car No. A. T. & S. F. 44405.....	8,101.5
Total.....	\$52,709.5

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
3	287	1/2" Sq. Tool Bits	.....	150 @ .84	126.00
"	77	5/8" " " )	.....	137 @ .838	114.81
"	41	3/4" " ")	190 Lbs.	1.41	108.57
4	2	#3 Vulcan Clamps	.....	24 @ 2.614	62.74
"	2	"	.....	17 @ 2.171	36.91
"	2	"	.....	2.63	5.26
"	2	"	.....	3.31	6.62
"	2	"	.....	4.20	8.40
"	5	"	.....	5.25	26.25
5	16	"	150 Lbs.	12 @ 4.90	58.80
6	1	7/8 x 12 Bronze Bush (3 1/4 #)	335 "	4 @ 5.21	20.84
90	1	"	.....	.43 lb.	1.40
"	1	"	.....	.43	1.29
"	8	1 1/4 x 12	.....	.52	21.71
"	5	1 1/2 x 12	.....	.52	21.84
"	1	3 x 2	.....	.45	2.36
"	1	4 3/4 x 5 3/4	.....	.46	13.46
"	1	1 x 2 x 12	.....	.43	4.73
"	6	1 x 2 1/4 x 12	.....	.43	33.54
"	3	1 x 2 1/2 x 12	.....	.55	16.09
"	11	1 x 3 x 12	550 Lbs.	.564	155.10

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
7	1	1½ x 4½ x 12 "	(50 #)	.52	26.00
"	1	3 x 5¼ x 12 "	(53½ #)	.52	27.82
"	1	4½ x 3 x 8 "	(22 #)	.52	11.44
"	1	6 x 7 x 12 "	(42½ #)	.52	22.10
"	1	T 2050 C	(11½ #)	.40	4.60
"	9	T 4079	(52½ #)	.40	21.00
"	6	T 4141 C	(13 #)	.40	5.20
"	6	T 4141 D	(8 #)	.40	3.20
"	2	Cast Brass Nuts	(9½ #)	.40	3.80
91			320 Lbs.		
"	1	5 x 6¼ x 9 Bronze Bush	(31½)	.52	16.38
8	3	#6 Thread Chaser		.90	2.70
"	1	#7 "		.90	.90
"	3	"		.90	2.70
"	3	"		.81	2.43
"	3	"		.83	2.49
"	2	"		.81	1.62
"	3	"		.81	2.43
"	3	"		.81	2.43
"	3	"		.81	2.43
"	3	"		.81	2.43
"	3	"		.81	2.43
"	3	"		.81	2.43
"	2 set	Harness 1¼" Chaser		.81	2.43
"	4	#6 Thread Cutters		7.58 set	15.16

"	6	#7	"	"	"	.46	2.76
"	6	#8	"	"	"	.45	2.70
"	6	#9	"	"	"	.45	2.70
92							
"	6	#10	"	"	"	.46	2.76
"	6	#11	"	"	"	.45	2.70
"	6	#12	"	"	"	.45	2.70
"	6	#13	"	"	"	.46	2.76
"	6	#14	"	"	"	.45	2.70
"	6	#16	"	"	"	.45	2.70
"	6	#18	"	"	"	.45	2.70
"	6	#20	"	"	"	.46	2.76
Total							1,063.48

93

Sheet #2.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
8	3	80 Deg. Angle Cutters H. S.	.....	8.20	24.60
"	1	" " " "	.....	8.20	8.20
"	1	" " " "	.....	6.70	6.70
"	1	" " " "	.....	6.70	6.70
"	1	7 P. 26 to 34 Gear Cutter	.....	4.72	4.72
"	1	8 P. 14 to 16 "	.....	4.50	4.50
"	1	4 D. P. 208 to 12 Gear Cutter	.....	20.30	20.30
"	1	10 P. 26 to 34 "	.....	9.50	9.50

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	1	9 P. 155 to 134 " "	.....	3.19	3.19
"	2	8 x 1½ x 1¼ Sd. Mill Cutter	.....	37.56	75.12
"	3	5 x ½ x 1 " "	.....	17.91	53.73
"	6	#29 Key Cutter	.....	2.91	17.46
"	1	#4 D. P. 12-18 Stocking Cutter	.....	27.19	27.19
"	4	60 Deg. 4½ x 1¼ Gear Cutter	.....	27.35	109.40
"	4	60 " 3½ x 1¼ " "	.....	9.50	38.00
"	2	#7 10 P. " "	.....	9.68	19.36
"	3	2 x ⅛ x ⅞ Radius " "	.....	2.93	8.79
"	2	2 x 5/32 x ⅞ " "	.....	3.60	7.20
"	2	S. S. Taper Collets	.....	2.75	5.50
94					
"	4	#N " "	.....	2.75	11.00
"	2	#A " "	.....	2.75	5.50
"	4	#KK " "	.....	4.50	18.00
"	1	#2 Morse Taper Collets Blanks	.....	1.60	1.60
"	4	#4 " "	.....	2.29	9.16
"	1	#1 " "	.....	1.20	1.20
"	6	#5 " "	.....	2.83	16.98
"	1	⅝ R. H. End Mills T. S.	.....	4.65	4.65
"	9	3/16 Spiral End Mills T. S.	.....	3.61	32.49
"	30	3/16 " " S. S.	.....	.85	25.50
"	29	3/16 #5 " "	.....	.85	24.65
"	4	¼" T. S. " "	.....	2.35	9.40
"	44	⅛" Two Lipped End Mills	.....	2.35	103.40
"	1	⅛" T. S. End Mills	.....	1.00	1.00

46	"	3/16 Two Lipped End Mills	.....	2.35	108.10
19	"	"	.....	2.05	16.40
		3/8 T. S.	.....	1.10	12.10
48	"	"	.....	2.40	115.20
		3/8 T. S.	.....	
95					
3	"	11/16 T. S.	.....	5.28	15.84
7	"	3/4 T. S.	.....	5.45	38.15
8	"	3/4 T. S.	.....	5.45	43.60
15	"	1" T. S.	.....	6.75	60.75
				8.48	42.40
				6.80	6.80
6	"	1-5/16 R. H.	.....	5.36	32.16
2	"	1 1/4" T. S. Spiral	.....	2.35	4.70
3	"	4 x 2 x 1 1/2	.....	40.50	121.50
5	"	3 x 1 3/4 x 1 1/4	.....	22.40	112.00
5	"	3 x 2 1/4 x 1	.....	26.86	134.30
3	"	1/4-20 Little Giant Dies	280 Lbs.	1.00	3.00
3	"	3/8-16 "	.....	1.25	3.75
2	"	1/2-13 "	.....	1.50	3.00
2	"	5/8-11 "	.....	1.75	3.50
2	"	3/4-10 "	.....	2.00	4.00
2	"	5/16-24 Button	.....	.85	1.70
1	"	1/2-20 "	.....	.85	.85
96					
24	"	3/8-16 "	.....	.30	7.20
23	"	3/4-10 "	.....	1.31	30.13
22	"	#2-56 "	.....	.64	14.08
Total			.....		1,677.40

Sheet #3.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
9	6	7/8-9 Button Dies	.....	1.72	10.32
"	1	15/16-24 "	.....	4.30	4.30
"	6	1/4-20 Bottom Taps	.....	.212	1.27
"	14	3/16-32 "	.....	.12	1.68
"	32	5/16-18 "	.....	.238	7.62
"	5	3/8-16 "	.....	.26	1.30
97					
"	44	1/2-13 "	.....	.33	7.92
"	36	1/2-20 "	.....	.333	6.66
"	62	5/8-11 "	.....	.336	12.10
"	40	3/4-10 "	.....	.426	20.45
"	36	1-8 "	.....	.422	5.91
"	35	1 1/4-7 "	.....	.576	20.74
"	23	1/8-44 Plug	.....	.573	2.29
"	28	5/16-18 "	.....	.956	34.42
"	5	3/8-16 "	.....	1.646	57.61
"	42	1/2-13 "	.....	.26	5.98
"	36	1 1/2-20 "	.....	.24	6.72
"			.....	.26	1.30
"			.....	.333	7.99
"			.....	.33	5.94
"			.....	.33	5.94

98	"	58	5/8-11	"	"	.....	48	@	.436	20.98
"	"	46	3/4-10	"	"	.....	10	@	.51	5.10
"	"	11	7/8-9	"	"	.....	24	@	.573	13.75
"	"	36	1-8	"	"	.....	22	@	.57	12.54
"	"	35	1 1/4-7	"	"	.....			.82	9.02
"	"	20	5/8-11	Taper	"	.....			.956	34.42
						.....	12	@	1.646	57.61
						.....	3	@	.432	5.18
						.....	5	@	.52	1.56
						.....			.41	2.05
						.....			.57	10.83
						.....			.92	9.20
						.....			.262	1.31
						.....			10.04	180.72
						.....			4.01	48.12
						.....			3.15	25.20
						.....			2.51	10.04
						.....			3.21	19.26
						.....			4.71	23.55
						.....			8.21	57.47
						.....			2.61 doz.	4.98
99	"	152	6"	"	Bastard	.....	120	@	2.61	26.10
"	"	37	6"	Second Cut	"	.....	9	@	2.61	1.96
"	"	82	6"	Rd. Smooth	"	.....	23	@	2.44	4.67
"	"	19	6"	Flat Bast.	"	.....			2.86	8.82
						.....			1.92	13.12
						.....			1.50	2.38

"	29	12" Rd.	"	"	"	370 #	25.73	"	170.88
"	12	12" Sq.	"	"	"	370 #	7.10	}	695.80
"	71	14" Mill	"	"	"	370 #			
"	54	14" Rd.	"	"	"	370 #			
13	324	10" Hand Hack Saw Blades.	"	"	"	350 #			
"	394	10" Power	"	"	"	360 #	13	@	7.15
"	747	12" "	"	"	"	370 #	7	@	7.16
"	960	14" "	"	"	"	370 #	2	}	809.40
14	20	14 x 1 1/4 x 5 Emery Wheel 60-4-K-84.	"	"	"	370 #			
15	20	"	"	"	"	370 #			
16	20	"	"	"	"	370 #			
17	20	"	"	"	"	370 #	19	@	7.16
18	18	"	"	"	"	370 #	7.10	}	136.04
19	20	"	"	"	"	370 #			
20	19	"	"	"	"	370 #			
21	21	"	"	"	"	370 #			
22	20	"	"	"	"	370 #	2	@	7.16
23	14	"	"	"	"	370 #	19	@	7.19
24	20	"	"	"	"	370 #	7.10	}	136.61
25	20	"	"	"	"	370 #			
26	20	"	"	"	"	370 #			
27	20	"	"	"	"	370 #			
28	1	18 x 2 x 9 Emery Wheel 24-C-L.	"	"	"	370 #	13.10		13.10

.....	2 @	7.22	14.44
.....	15 @	7.16	107.40
.....	6 @	7.10	42.60
.....	3 @	7.17	21.51
175#		1.18	105.02
			<hr/>
			3,145.08

33	89	7 x 1/2 x 1 1/4	"	"	303-v
----	----	-----------------	---	---	-------	-------

Total

104

Sheet #5.

Contract 1498.

Inventory Supplies.

Case No.	Quantity.	Article.		Gross weight.	Price each.	Total price.
34	5	6 x 7/16 x 1 1/4	Emery Wheel (Disc)	60J	1.00	5.00
"	19	6 x 11/16 x 1 1/4	"	50J ...	1.16	22.04
"	12	4 x 1/2 x 1 1/2	"	46J ...	.56	6.72
"	6	6 x 1 1/2 x 2	"	60L ...	1.34	8.04
"	2	7 x 1/2 x 1 1/4	"	36U ...	1.64	3.28
"	1	5 x 1 x 1	" (Rim)	40L ...	1.325	1.33
"	3	4 x 3/8 x 1/4	"	50-2 ...	.95	2.85
"	7	2 1/2 x 3/8 x 3/8	"	46M ...	.45	3.15
"	13	3 1/4 x 1 1/2 x 1/2	"	50J ...	1.03	13.39
"	2	2 1/2 x 3/8 x 1/4	" (Cup)	50-2 ...	.50	1.00
"	6	3 1/4 x 1 1/4 x 1/2	" (Cup)	50J ...	.92	5.52
"	3	7 x 1/16 x 1 1/4	" (Elastic)	60A-3	1.25	3.75
"	3	7 x 1/16 x 1 1/4	"	60A-2 1/2	1.15	3.45

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
105					
"	6	6 x 1/8 x 1 1/2	"	"	
"	4	4 x 1/16 x 3/8	"	"	5.70
"	2	6 x 1/8 x 1 1/4	"	"	2.64
"	5	6 x 1/16 x 1 1/2	"	1.14	2.28
"	4	6 x 1/16 x 1 1/4	"	.95	4.75
"	33	3/8 x 1/4 x 1 3/2	"	.95	3.80
"	24	7/16 x 1/4 x 1/8	"	.18	5.94
"	15	3/4 x 1/4 x 7/16	"	.18	4.32
"	21	3/8 x 1/4 x 1/8	"	.18	2.70
"	14	13/16 x 1/4 x 1/16	"	.18	3.78
"	24	3/4 x 1/4 x 1/4	"	.18	2.52
"	6	1 x 1/2 x 3/8	"	.18	4.32
"	6	1 1/2 x 1/4 x 3/16	"	.30	1.80
35	4	20 x 2 1/2 x 9	"	.16	.96
75	8	16 x 5 x 13 1/2	"	14.86	59.44
			85#	14.17	85.02
			285#	@ 13.57	27.14
			280#	@ 11	4.40
				@ 11	4.18
36	40	#1 Carbon Drills.			
"	38	#3			
106					
"	35	#4		.11	3.85
"	47	#5		.11	5.17
"	47	#6		.10	4.70
"	29	#7		.10	2.90
"	24	#8		.10	2.40
"	36	#9		.10	3.60
"	36	#10		.10	3.60

24	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"	"
----	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

[illegible]

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	12	29/64	.....	.54	6.48
"	12	31/64	.....	.455	5.46
"	3	13/16	.....	1.42	4.26
"	1	55/64	.....	1.23	1.23
Total					157.24

Sheet # 7.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
36	2	19/64 T. S. Carbon Drills.	.....	.37	.74
"	6	33/64 " "	.....	.94	5.64
112					
"	6	9/16 " "	.....	.673	4.04
"	6	37/64 " "	.....	.73	4.38
"	6	19/64 " "	.....	.713	4.28
"	1	39/64 " "	.....	.79	.79
"	6	5/8 " "	.....	.78	4.68
"	6	21/32 " "	.....	.813	4.88
"	6	43/64 " "	.....	.89	5.34

"	4	45/64	"	"	"	1	@	.93	16.50
"	"	"	"	"	"	2	@	1.81	66.96
"	6	25/32	"	"	"	1	@	.93	37.44
"	7	31/32	"	"	"			6.38	8.80
"	29	1 1/8	"	"	"			10.78	1.89
"	8	1 1/4	"	"	"			92.22	3.96
"	37	1 3/8	"	"	"	36	@	21.12	20.48
"	"	"	"	"	"	1	@	112.32	11.04
"	2	3/4 Carb. Fluted Shell Reamers.						4.23	3.44
"	"	"						1.68	7.74
"	6	7/8 H. S.	"	"	"			2.75	4.32
"	12	7/8 " " Spiral Reamers.						5.58	7.72
"	6	1 " " " "						6.24	12.30
"	8	1 3/64 Carb. Fluted				5	@	1.76	11.88
"	"	"				1	@	1.89	3.84
"	2	1 3/8 H. S. Fluted Reamers.				2	@	1.98	7.20
"	4	1 1/2 Carb.	"	"	"			10.24	2.47
"	3	1 5/8 Carb. Rose Reamers.				3	@	3.68	
"	8	1 5/8 " Fluted	"	"	"	1	@	3.44	
"	"	"	"	"	"	2	@	3.87	
"	"	"	"	"	"	1	@	4.32	
"	"	"	"	"	"	2	@	3.86	
"	"	"	"	"	"	3	@	4.10	
"	"	"	"	"	"	2	@	5.94	
"	"	"	"	"	"	1	@	3.84	
"	2	5/8 Hand Expansion Reamers.						3.60	
"	1	3/4 " Carb.	"	"	"			2.47	

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	2	1½ " "	.....	1 @ 6.48	6.48
"	1	7/8 H. S. Mach.	.....	1 @ 5.76	5.76
"	1	7/8 Hand Expansion	.....	2.07	2.07
"	4	1½ H. S. Rose Taper Reamers	.....	2.79	2.79
"	7	2" " Shell	.....	21.35	85.40
"	7	1¾ Fluted Shell Reamers	.....	5.32	37.24
"	12	#3 Taper Pin Reamers	.....	4.32	51.84
"	15	#4 " "	.....	4.35	65.25
"	12	#6 " "	.....	1.13	13.56
"	12	#7 " "	.....	1.31	15.72
"	3	5/16 T. S. Chucking Reamers	.....	1.69	5.07
"	16	3/8 " "	.....	1.88	30.08
"	4	7/16 " "	.....	1.25	5.00
"	3	9/16 " "	.....	1.49	4.47
"	8	5/8 " "	.....	1.53	12.24
"	8	5/8 " "	.....	1.93	15.44
"	8	5/8 " "	.....	6.59	52.72
Total					885.53

Sheet #8.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
36	14	1/4 Carb. Hand Reamers.	.....	1.26	17.64
"	15	"	.....	1.21	14.52
				12 @	
"	11	"	.....	1.44	4.32
"	7	"	.....	1.67	18.37
"	11	"	.....	1.71	11.97
				8 @	
"	50	"	.....	1.80	14.40
				3 @	
"	50	"	.....	1.62	4.86
				48 @	
"	9	"	.....	1.65	79.20
"	2	"	.....	1.87	3.74
"	2	"	.....	2	
		Spiral Hand Reamers.	.....	1.98	17.82
"	2	"	.....	2.79	5.58
"	2	"	.....	2.96	5.92
		Hand Reamers	.....	
		"		
116					
"	6	"	.....	3.68	22.08
"	6	"	.....	4.20	25.20
"	1	"	.....	6.41	6.41
"	2	"	.....	1.26	2.52
		600 Lbs.			
Total					254.55

Sheet #9.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
37	6	1 9/16 T. S. Carbon Drills.	.....	4.53	27.18
"	6	"	.....	@ 4.99	9.98
117		15/8	.....	@ 5.02	15.06
"	16	17/32	.....	@ 6.83	6.83
"	18	1 1/2	.....	2.49	39.84
"			.....	4.20	4.20
"			.....	@ 4.12	45.32
"			.....	@ 4.07	24.42
"			.....	8.13	16.26
"	2	1 3/4	.....	1.08	6.48
"	6	51/64	.....	7.69 doz.	7.05
"	11	#29	.....	1.39	33.36
"	24	1/4	.....	1.64	118.08
"	72	5/16	.....	1.26	3.78
"	3	11/32	.....	2.70	191.70
"	71	17/32	.....	3.48	24.36
"	7	9/16	.....	3.68	66.24
"	18	5/8	.....	5.91	29.55
"	5	51/64	.....	5.91	35.46
"	6	13/16	.....	8.00	48.00
"	6	27/32	.....	15.05	90.30
"	6	1 3/16	.....	38.95	194.75
"	5	1 11/16	.....	

"	2	1 1/16	H. S.-T. S. Drills.	.....	.....	11.424	22.85
"	3	1 3/16	"	"	.....	14.41	43.23
"	1	2"	"	"	.....	58.83	58.83
"	11	1 31/32	"	"	.....	56.70	170.10
						3	341.10
						@	113.50
"	3	1 15/16	"	"	.....	56.85	163.89
"	2	1 7/8	"	"	.....	54.63	100.92
"	3	1 13/16	"	"	.....	50.46	138.78
"	5	1 23/32	"	"	.....	46.26	201.75
"	3	1 3/4	"	"	.....	40.35	126.18
"	6	63/64	"	"	.....	42.06	80.16
"	7	13 1/4	Shell	"	.....	13.36	135.66
"	32	5/16	T. S. H. S.	"	.....	19.38	10.52
						@	1.754
"	12	9/16	"	"	.....	6	9.90
"	28	5/8	"	"	.....	@	41.76
"	4	41/64	"	"	.....	6	103.04
						@	16.16
						@	
						@	
"	9	21/32	"	"	.....	4.08	36.72
"	6	31/32	"	"	.....	8.78	3.61
						@	22.99
"	11	13/32	"	"	.....	8.67	58.23
"	9	53/64	"	"	.....	2.09	12.79
"	1	1 3/32	"	"	.....	6.47	52.00
"	4	1 1/8	"	"	.....	12.79	45.54
"	3	1 7/32	"	"	.....	13.00	115.74
"	6	1 5/16	"	"	.....	15.18	
						1	
						5	
						@	
						@	
						@	

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	1	1 3/8	"		
"	2	1 7/16	"	21.32	21.32
"	3	1 1/2	"	24.41	48.82
"	3	1 9/16	"	27.16	81.48
"	3	1 19/32	"	31.92	95.76
"	2	1 5/8	"	33.63	100.89
"	4	1 11/16	"	35.28	70.56
		"	"	3 @ 38.67	116.01
		"	"	1 @ 26.56	26.56
120		Sheet #10.	700#		\$3,826.28

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
#38	134 1/2 #	1/8" String Solder		132# @ .484	63.89
"	7	3 to 4 Taper Sleeves		2 1/2 @ .40	1.00
"	8	"		1.35	9.45
"	10	"		1.08	8.64
"	2	#3-S-S Arbor for shell reamers.		.81	8.10
"	3	#3-T-S "		2.64	5.28
"	1	#5-T-S "		2.75	8.25
"	6	#2 Tool Holders		3.42	3.42

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
#40	360'	4" Double	.....	.858 "	308.88
"	300'	"	.....	.462 "	138.60
"	281' 6"	"	.....	.184 "	78.20
"	425'	1½ Single	#510	.46 "	129.49
"	257'	3" Double	.....	.68 "	174.76
#41	2 Sets	Jaws for King Boring Mill	.....	74.52 set	149.04
"	1 "	Yoke	.....	
"	1	Gear Shifter	.....	
"	2	Bevel Gear for Clutch Drive	.....	46.60 lot	46.60
"	4	Gear Clutch quick return	.....	
"	1	Friction Gear (this price includes cost of clutch Gear in case #43) for Pittsburg Lathe	.....	
123				23.47 "	23.47
"	1	Pinion Gear for table drive	.....	
"	1	"	.....	36.44	36.44
"	1	" " comb	.....	34.45	34.45
"	1	" " back	.....	36.83	36.83
"	3 Sets Bevel	" " Reverse	390 #	14.00 set	42.00
					<hr/> \$2,806.61

Sheet #11.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
#42	1	Spindle & Bushing for Std. Engine.	.....	31.95	31.95
"	1	Rack Pinion Gear for 32" Bridgeford Lathe.	.....	12.70	12.70
"	1	" " "	.....	12.51	12.51
"	9	Vice Screws and Nuts.	.....	2.16	19.44
124					
"	2	Fan Wheels for Full Flow Pump.	.....	1.00	2.00
"	5	Glands	.....	.53	2.65
"	3	Pinion Gears.	.....	.75	2.25
"	3	Pkg. Packing	.....	.25	.75
"	2	H 014 Bevel Gears for Giddings & Lewis.	.....	10.00	20.00
"	2	H 39 " " "	.....	8.90	17.80
"	1	Cross Feed Nut " " "	.....	4.20	4.20
"	2	Quick Return Shaft Gears " " "	.....	11.53	23.06
"	1	" " Mitre " " "	.....	4.20	4.20
"	2	H 055 Shaft " " "	.....	2.75	5.50
"	2	H 056 " " "	.....	2.25	4.50
"	1	Table Feed Bevel Gear " " "	.....	4.74	4.74
"	2	H 55 Gears for Giddings & Lewis.	.....	9.35	18.70
"	4	H033 Clutch " " "	.....	7.12	28.48
"	4	Key for table Gears " " "	.....	.233	.93
"	3	Bevel Gear for Quick return.	.....	4.20	12.60
"	2	Spindle clutch lever Giddings & Lewis.	.....	1.93	3.86
"	1	#1102 Collar for K & O.	.....	2.64	2.64

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
125					
"	1	Double Bevel Gear Sleeve for Le Blond.	270 #	5.36	5.36
#43	4	4 1/2 Reed Vice.	.....	13.44	53.76
"	1	Friction Clutch Gear (see gear in Case 41)	.....	
#44	9	Steel Drawers.	400 #		
#45	9	"	.....	
#46	9	"	.....	4.77 ea	42.93
#47	9	"	.....	4.77 "	42.93
#48	9	"	.....	4.77 "	42.93
#49	9	"	.....	4.77 "	42.93
#50	9	"	.....	4.77 "	42.93
#51	9	"	.....	4.77 "	42.93
#52	9	"	.....	4.77 "	42.93
#53	10	"	.....	4.77 "	47.70
"	27	3/4 x 22" Machine Bolts.	.....	22.69 C	6.13
"	28	3/4 x 24" "	.....	24.34 "	6.82
"	26	3/4 x 26" "	.....	25.99 "	6.76
#54	78	3/4 x 6" "	300 #	9.02 "	7.04
"	56	3/4 x 7" "	.....	10.31 "	5.77
"	23	3/4 x 5" "	.....	8.66 "	1.99
126					
"	45	3/4 x 8" "	.....	8.02 "	3.61
"	19	3/4 x 3" "	.....	6.66 "	1.27
"	96	3/4 x 2" "	.....	6.19 "	5.94
"	13	3/4 x 9" "	.....	11.36 "	1.48
"	102	3/4 x 8 1/2" "	.....	11.35 "	11.58
#55	31	5/8 x 12" "	485 #	7.12	2.21

"	5.06	"
"	1.11	"
"	2.91	"
"	6.47	"
"	6.68	"
"	1.94	"
"	7.84	"
"	7.92	"

\$763.62

Sheet #12.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
#56	46	Machine Bolts		4.98 C	2.29
"	57	"		3.13 "	1.78
"	64	"		3.87 "	2.48
"	43	"		5.47 "	2.35
"	61	"		5.90 "	3.60
#57	150	"	160#	1.83 "	1.83
"	193	"		1.37 "	.69
"		"		2.02 "	2.02
"	43	"		1.52 "	.76
"	43	"		1.92 "	.83
"		"		1.44 "	.62
128		"		1.54 "	.66
"	38	"		1.30 "	.49
"	60	"		1.54 "	.92
"	79	"		1.26 "	1.00

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	90	1/4 x 2	"	1.06 "	.95
"	75	1/4 x 2 1/2	"	1.12 "	.84
"	78	1/4 x 3	"	1.16 "	.90
#58	183	1/2 x 4 1/2	100 #	3.68 "	6.73
"	166	1/2 x 3	"	3.23 "	3.23
"	150	1/2 x 4	"	3.13 "	2.07
#59	70	1/4 x 2 1/2	165 #	3.50 "	5.25
"	27	5/16 x 1 1/4	"	.88 "	.62
"	92	1/4 x 3	"	.98 "	.26
"	144	1/4 x 4	"	.95 "	.87
#60	195	1/4 x 2	"	1.63 "	1.63
"	47	1/4 x 3	"	1.67 "	.73
"	72	1/4 x 5	"	1.72 "	3.35
129		Lag Screws	"	1.71 "	.80
"		"	"	1.64 "	1.18
"	100	5/16 x 2	"	2.13 "	2.13
"	170	3/8 x 2	"	2.07 "	3.52
"	99	3/8 x 4	"	2.40 "	2.38
"	44	3/8 x 2 1/2	"	2.25 "	.99
"	60	3/8 x 3	"	1.57 "	.94
"	89	1/2 x 1 1/2	"	2.63 "	2.34
"	22	1/2 x 2	"	2.63 "	.58
"	26	1/2 x 2 1/2	"	3.13 "	.81

[illegible]

Sheet #13.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
#62	64	3/16 x 1 1/2 F. H. Stove Bolts	.....	.26 C	.17
"	48	3/16 x 3/4 " "	.....	.26 "	.12
"	250	3/16 x 1 R. H.	.....	.41 "	1.03
"	216	3/16 x 2 " "	.....	.54 "	1.17
131					
"	100	1/4 x 1 " "	.....	.59 "	.59
"	119	1/4 x 2 " "	.....	.72 "	.86

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	34	1/4 x 5/8	.....	1.63	.55
"	131	1/4 x 1 1/2	.....	@	2.27
"	342	5/16 x 3/4	.....	@	.86
"	211	5/16 x 1 1/4	.....	@	7.70
"	40	5/16 x 1 1/2	.....	@	5.26
"	102	3/8 x 3/4	.....	@	.26
"	200	3/8 x 1	.....	@	1.12
"	181	3/8 x 1 1/4	.....	@	.06
"	131	3/8 x 1 1/2	.....	@	2.63
"	119	7/16 x 1	.....	@	5.64
"	33	7/16 x 1 1/4	.....	@	5.43
"	30	7/16 x 1 1/2	.....	@	2.76
"	205	1/2 x 1	.....	@	.99
"	93	1/2 x 1 1/4	.....	@	3.19
"	96	1/2 x 1 1/2	.....	@	.52
"	156	1 1/2 x 1 3/4	.....	@	.97
"	93	1/2 x 1 1/4	.....	@	.93
"	96	1/2 x 1 1/2	.....	@	3.98
"	156	1 1/2 x 1 3/4	.....	@	3.65
"	93	1/2 x 1 1/4	.....	@	.20
"	96	1/2 x 1 1/2	.....	@	3.91
"	156	1 1/2 x 1 3/4	.....	@	4.25

QTY.	SIZE.	UNIT PRICE.	TOTAL PRICE.
108	1/2 x 2	4.65	4.98
143	1/2 x 2 1/4	5.05	5.44
336	1/2 x 2 1/2	4.71	5.81
127	1/2 x 3	5.20	6.49
44	5/8 x 1	6.56	2.97
135	5/8 x 1 1/4	5.73	12.49
84	5/8 x 1 1/2	7.13	5.99
168	5/8 x 1 3/4	7.50	12.60
91	5/8 x 2	8.06	4.03
49	5/8 x 2 1/4	8.08	3.31
45	5/8 x 2 1/2	7.48	3.67
43	5/8 x 3	7.80	3.51
29	1 x 4	8.78	3.78
164	1/4 x 3/4	18.59	5.39
110	1/4 x 1	1.80	2.95
151	5/16 x 1	1.95	2.15
275	5/16 x 1 1/4	2.10	3.17
43	5/16 x 1 1/2	2.25	6.19
		2.40	1.03
Total			180.91

134

Sheet #14.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Hex. Hd. Cap Screw	Gross weight.	Price each.	Total price.
65	140		$\frac{3}{8} \times \frac{3}{4}$	.....	2.25	3.15
"	181		$\frac{3}{8} \times 1\frac{1}{4}$	.....	2.55	4.62
"	22		$\frac{3}{8} \times 1\frac{1}{2}$	.....	2.03	.45
"	250		$7/16 \times 1"$	.....	2.94	7.35
"	19		$7/16 \times 1\frac{1}{4}$	.....	3.18	.60
"	194		$7/16 \times 1\frac{1}{2}$	.....	3.42	6.63
66	347		$\frac{1}{2} \times 1$	95 Lbs.	200 @	7.68
"	226		$\frac{1}{2} \times 1\frac{1}{4}$	.....	100 @	3.54
"				.....	47 @	2.66
135				.....	200 @	3.90
"	161		$\frac{1}{2} \times 1\frac{1}{2}$	.....	26 @	2.93
"	252		$\frac{1}{2} \times 1\frac{3}{4}$	.....	
"	338		$\frac{1}{2} \times 2$	.....	
"	195		$\frac{1}{2} \times 2\frac{1}{2}$	.....	100 @	4.62
"	56		$\frac{1}{2} \times 3$	.....	152 @	3.46
67	188		$\frac{1}{2} \times 3\frac{1}{2}$	.....		7.02
"	158		$\frac{5}{8} \times 1\frac{1}{2}$	185#	4.98	16.83
"				.....	5.77	11.25
"				.....	6.42	3.60
"				.....	88 @	5.53
"				.....	100 @	7.38
"				.....		4.87
"				.....		7.38

194	5/8 x 2 1/2	"	"	"	"	"	"	"	"	.....	100 @ 6.12	C	6.12
"	5/8 x 3	"	"	"	"	"	"	"	"	.....	50 @ 8.16	C	4.08
"	5/8 x 4	"	"	"	"	"	"	"	"	.....	44 @ 6.12	C	2.69
136		"	"	"	"	"	"	"	"	.....	50 @ 9.12	C	4.56
68	5/8 x 3 1/2	"	"	"	"	"	"	"	"	.....	34 @ 7.00	C	2.38
"	5/8 x 4 1/2	"	"	"	"	"	"	"	"	.....	50 @ 11.94	C	5.97
"	3/4 x 2 1/2	"	"	"	"	"	"	"	"	.....	48 @ 9.95	C	4.78
"	3/4 x 3	"	"	"	"	"	"	"	"	.....		
"	3/4 x 3 1/2	"	"	"	"	"	"	"	"	.....		
69	3/4 x 4	"	"	"	"	"	"	"	"	.....	200 @ 10.38	C	20.76
"	7/8 x 2 1/2	"	"	"	"	"	"	"	"	.....	23 @ 7.79	C	1.79
"	7/8 x 3	"	"	"	"	"	"	"	"	.....	10.13	C	7.60
"	7/8 x 3 1/2	"	"	"	"	"	"	"	"	.....	9.30	C	2.05
"	1 x 3	"	"	"	"	"	"	"	"	.....	10.50	C	5.46
"	1 x 3 1/2	"	"	"	"	"	"	"	"	.....	12.36	C	5.19
"	1 x 4	"	"	"	"	"	"	"	"	.....	100 @ 14.22	C	14.22
70	1 x 4 1/2	"	"	"	"	"	"	"	"	.....	24 @ 10.66	C	2.56
137		"	"	"	"	"	"	"	"	.....	16.14	C	16.95
"	1 x 6	"	"	"	"	"	"	"	"	.....	14.22	C	4.69
"	1 1/8 x 4	"	"	"	"	"	"	"	"	.....	11.88	C	1.43
"	1 1/4 x 5	"	"	"	"	"	"	"	"	.....	18.00	C	39.78
		"	"	"	"	"	"	"	"	.....	20.40	C	6.12
		"	"	"	"	"	"	"	"	.....	22.30	C	8.47
		"	"	"	"	"	"	"	"	.....	5.80	C	1.29
		"	"	"	"	"	"	"	"	.....	28.50	C	28.50
		"	"	"	"	"	"	"	"			
		"	"	"	"	"	"	"	"	.....	36.60	C	5.49
		"	"	"	"	"	"	"	"	.....	33.60	C	7.39
		"	"	"	"	"	"	"	"	.....	48.30	C	8.21

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	356	1" Semi Hex Nuts.....		300 @ 8.94	C 26.82
"	25	" " ".....		56 @ 8.67	C 4.86
"	6	" " ".....		.16 ea.	4.00
"	22	" " ".....		.16 "	.96
"	12	" " ".....		.27 "	5.94
"	31	" " ".....		.0414 "	.50
"	115	" " ".....		5.94 C	1.84
"	146	" " ".....		4.47 C	5.14
		" " ".....	535#	3.22 C	4.70
	Total				404.57

138

Sheet #15.

Contract 1498.

Inventory of Supplies.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
71	132	1/4" Semi. Hex. Nuts.....		.99 C	1.31
"	86	" " ".....		1.24 C	1.07
"	200	" " ".....		1.85 C	3.70
"	37	" " ".....		2.23 C	.83
"	190	1/2" Castle " ".....		4.20 C	7.98
"	51	1 1/4" Black " ".....		.11 lb.	4.40
"	26	3/8 x 1 1/4" Allen Set Screw.....	40 lb.		

369	7/16 x 1	"	"	"	"	8.19 C	8.11
"	1/2 x 1/2	"	"	"	"	6.30 C	10.65
"	1/2 x 9/16	"	"	"	"	6.40 C	9.86
"	1/2 x 1	"	"	"	"	9.50 C	1.05
139							
196	1/2 x 1 1/2	"	"	"	"	11.12 C	21.80
37	3/4 x 7/8	"	"	"	"	13.73 C	5.08
12	1 x 3	"	"	"	"	40.72 C	4.89
82	1/2 x 14-20	Brass Mach. Screws.	"	"	"	1.83 Gr.	1.04
62	3/4 x 10-24	"	"	"	"	.48 Gr.	.21
79	3/4 x 14-20 FH	"	"	"	"	.472 Gr.	.26
124	1 1/4 x 14-20 FH Brass Mach. Screw.	"	"	"	"	.653 Gr.	.56
57	1" x 10-24 Fil. Mach. Screw.	"	"	"	"	.63 Gr.	.25
301	1 x 10-32	"	"	"	"	.63 Gr.	1.32
72	1/4 x 1	Sq. Hd. Set Screw.	"	"	"	1.18 C	1.06
"	5/16 x 1	"	"	"	"	1.29 C	2.58
"	5/16 x 1 1/4	"	"	"	"	1.38 C	2.68
"	5/16 x 1 1/2	"	"	"	"	1.49 C	2.31
"	3/8 x 3/4	"	"	"	"	1.38 C	3.99
"	3/8 x 1	"	"	"	"	1.46 C	3.34
"	3/8 x 1 1/4	"	"	"	"	1.14 C	1.14
140						1.57 C	3.14
"	3/8 x 1 1/2	"	"	"	"	1.17 C	.59
"						@	
182	3/8 x 1 1/2	"	"	"	"	100	1.95 C
"						200	1.70 C
222	3/8 x 1 3/4	"	"	"	"	50	1.93 C
"						@	
321	3/8 x 2	"	"	"	"	22	1.60 C
"						@	
"						100	2.20 C
"						82	1.95
"						200	1.39
"						22	3.86
"						@	.35
"						@	7.06

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	136	$\frac{3}{8}$ x 2 $\frac{1}{4}$	.....	100 @ 2.48 C	2.48
"	135	$\frac{3}{8}$ x 2 $\frac{1}{2}$	.....	36 @ 1.80 C	.65
"	47	$\frac{3}{8}$ x 2 $\frac{3}{4}$	.....	.....	3.71
"	220	$\frac{3}{8}$ x 3	.....	.....	1.03
"	54	7/16 x $\frac{3}{4}$	.....	.....	7.26
"	26	7/16 x 1	.....	.....	1.34
"	87	7/16 x 1 $\frac{1}{4}$	.....	.....	.44
"	23	7/16 x 1 $\frac{1}{2}$	.....	.....	1.68
"	70	$\frac{1}{2}$ x $\frac{3}{4}$	.....	.....	.37
"	58	$\frac{1}{2}$ x 1	.....	.....	1.31
"	335	$\frac{1}{2}$ x 1 $\frac{1}{4}$	.....	.....	1.43
"	320	$\frac{1}{2}$ x 1 $\frac{1}{2}$	.....	.....	7.94
141			225 Lbs.	2.64 C	8.45
73	148	$\frac{1}{2}$ x 1 $\frac{3}{4}$	.....	100 @ 2.97 C	2.97
"	238	$\frac{1}{2}$ x 2	.....	48 @ 2.16 C	1.04
"	145	$\frac{1}{2}$ x 2 $\frac{1}{4}$	.....	200 @ 3.30 C	6.60
"	126	$\frac{1}{2}$ x 2 $\frac{1}{2}$	.....	38 @ 2.40 C	.91
"	23	$\frac{1}{2}$ x 3	.....	.....	5.38
"	106	$\frac{5}{8}$ x 1 $\frac{1}{4}$	.....	.....	5.20
"	145	$\frac{5}{8}$ x 1 $\frac{1}{2}$	.....	.....	1.14
"	145	$\frac{5}{8}$ x 1 $\frac{3}{4}$	.....	.....	3.79
			.....	.....	5.79
			.....	.....	3.20
			.....	.....	1.98

Inventory of Supplies.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
"	127	"	"	.48 Gr.	.42
"	120	"	"	.86 Gr.	.71
"	144	"	"	1.32 Gr.	1.32
"	157	"	"	.28 Gr.	.31
"	144	"	"	.33 Gr.	.33
"	153	"	"	.45 Gr.	.47
"	200	"	"	.50 Gr.	.70
"	293	"	"	1.44 Gr.	2.88
"	142	"	"	@ 1.32 Gr.	.05
"	73	"	"	.26 Gr.	.26
"	279	"	"	.31 Gr.	.16
"	128	"	"	@ .31 Gr.	.31
"	66	"	"	@ .28 Gr.	.26
"		"	"	.33 Gr.	.29
"		"	"	.45 Gr.	.20
144					
"	11	"	"	.71 Gr.	.06
"	104	"	"	.85 Gr.	.62
"	87	"	"	.99 C	.86
"	27	"	"	4.23 C	1.14
"	50	"	"	5.16 C	2.58
"	80	"	"	5.58 C	4.46
"	49	"	"	7.20 C	3.53
"	136	"	"	@ 4.61 C	4.61
"		"	"	@ 4.50 C	1.62

Inventory of Tools & Fixtures.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
146					
78	1	T 2007 Fixture for Boring Slide Liners and Cylinder Housing in Slide #51010-1.....	.....	1,105.99	1,105.99
86	1	T 1285 2 $\frac{5}{8}$ Cutter.....	.....	11.10	11.10
"	3	T 3168 Pilot Counterbore.....	.....	14.77	44.31
"	3	T 3325 .800" Dia. Counterbore.....	.....	8.12	24.36
"	2	T 3326 .700" ".....	.....	6.13	12.26
"	3	T 2202 Counterbore.....	.....	18.09	54.27
"	3	T 3263 Profile Cutters.....	.....	7.39	22.17
"	3	T 1168 Form Counterbore.....	.....	8.03	24.09
"	5	T 1141 Finish Cutters.....	.....	3.38	16.90
"	3	T 1073 Rough Bor. Bar.....	.....	118.75	356.25
"	6	T 1044 " Cutter.....	.....	6.44	38.64
"	4	T 1082 Facing Cutter.....	.....	4.37	17.48
"	8	T 1078 Finish ".....	.....	3.23	25.84
"	3	T 1139 2nd Boring Bar.....	.....	37.37	112.11
"	6	T 1039 Facing Cutters.....	.....	2.29	13.74
"	7	T 1140 Rough ".....	.....	3.55	24.85
147					
"	8	T 1122 " Bor. Cutters.....	.....	5.98	47.04
"	6	T 1143 ".....	.....	6.54	39.24
"	6	T 3162 Facing Bar.....	.....	5.57	33.42
"	12	T 1123 Finish Cutters.....	.....	3.22	38.64
"	6	T 1202 Threading Tools.....	.....	4.20	25.20

"	2	T 3223	3 1/4 Cutters.	.....	53.96
"	1	T 3319	Facing "	.....	32.33
"	3	T 2188	End Mills.	.....	90.42
"	5	T 3170	"	.....	102.80
"	4	T 2184	"	.....	192.60
"	2	T 2003	Form Cutters.	.....	3.50
"	1	T 2004	2nd Hollow Mill.	.....	278.30
"	9	T 2038	#10 Cutters.	.....	119.79
"	10	T 2039	#7 "	.....	109.30
"	2	T 2030	#4 "	.....	22.80
"	5	T 2040	#12 "	.....	83.60
"	4	T 2032	#5 "	.....	91.24
"	4	T 2033	#3 "	.....	70.04

148

"	3	T 3196	11/16 Drills.	.....	10.99
"	6	T 3206	1/2" Pilot.	.....	6.90
"	4	T 3207	3/8" Pilot.	.....	11.22
"	3	T 2171	1 x 3/4 " C' Bore.	.....	12.32
"	1	T 1203	1.574 C' Bore.	.....	15.05
"	1	T 1204	1.574 Revel C' Bore.	.....	18.76
"	2	T 1158	Slab Mills.	.....	114.19
"	1	T 3219	Spiral Slab Mill.	.....	160.60
"	16	T 2006	Pes. for Cutters.	.....	1.75
"	1	T 2022	2nd Finish "	.....	13.54
Total					9,490.31

149

Sheet #18,

Contract 1498.

Inventory of Tools & Fixtures.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
86	1	T 2020 Cutters.....	.....	25.95	25.95
"	7	T 1171 Spot Facers.....	.....	7.60	53.20
"	5	T 2094 1st Tool Cutters.....	.....	3.67	18.35
"	2	T 3190 Facing Cutters.....	.....	4.33	8.66
"	5	T 2024 ".....	.....	32.04	160.20
"	1	T 3270 ".....	.....	15.12	15.12
"	5	T 2016 1st Rough Cutter.....	.....	17.08	85.40
"	6	T 3194 Facing ".....	.....	11.97	71.82
"	4	T 3310 Slitting Saws.....	.....	13.06	52.24
"	6	T 1300 Spot Facers.....	.....	14.75	88.50
"	1	T 1219 Countersink.....	.....	18.22	18.22
"	2	T 2003 Rough Hollow Mills.....	.....	456.41	912.82
150					
"	10	T 3137 Cutters.....	.....	13.70	137.00
"	9	T 3137 Side Milling Cutters.....	.....	4.86	43.74
"	4	T 3142 Spiral End Mills.....	.....	16.89	67.56
"	5	T 3238 Shell ".....	.....	28.21	141.05
"	12	T 2207 60 Deg. x 3/4 Countersink.....	.....	6.51	78.12
"	5	T 3308 1/2" End Mills.....	.....	8.99	44.95
"	4	T 3311 60 Deg. 5/16 Countersink.....	.....	6.20	24.80
"	3	T 3204 Notching Cutters.....	.....	10.07	30.21

.....	35.97
.....	31.15
.....	40.68
.....	20.34
.....	10.70
.....	20.44
.....	75.24
.....	15.43
.....	17.34
.....	7.47

T 3217	L. H. Slitting Saw 1/4"	.....
T 3218	R. H. " "	.....
T 3309	End Mills.....	.....
T 3224	Sp. End Mills.....	.....
T 3282	Facing Cutters.....	.....
T 3243	" ".....	.....
T 3226	2.650" ".....	.....
T 3138	2" x 1" Mill Cutters.....	.....
T 1181	Spot Facers.....	.....

.....	15.76
.....	157.44
.....	312.00
.....	123.52
.....	224.21
.....	83.24
.....	48.68
.....	233.24
.....	63.02
.....	20.04
.....	50.06
.....	79.96
.....	355.32
.....	145.44
.....	17.07
.....	100.94
.....	9.68
.....	3.23

.....	257	Lbs.
T 1170	" ".....	1.97
T 3210	Taper Sockets.....	78.72
T 1089	1.962 Mach. Taps.....	26.00
T 3209	9 x 12 Taper Sockets.....	61.76
T 3237	Arbor.....	32.03
T 3244	Taper Cutters.....	20.81
T 3261	Cutter Arbor.....	24.34
T 1142	Spot Facers.....	116.62
T 3272	Spec. Arbor.....	31.51
T 3222	Milling ".....	20.04
T 3141	Cutter ".....	50.06
T 1256	Spot Facer.....	79.96
T 1108	1 7/8 Shell Drill.....	25.38
T 2019	2nd Cutters.....	12.12
T 1126	Finish Cutters.....	5.69
T 2017	Rough ".....	7.21
T 2044	" ".....	4.84
T 2043	" ".....	3.23

Inventory of Tools & Fixtures.—*Continued.*

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
152					
"	9	T 1133 Facing	.....	3.70	33.30
"	8	T 1130 "	.....	3.93	31.44
"	5	T 1125 "	.....	4.35	21.75
"	6	T 3130 747 Mach. Reamers	.....	64.47	386.82
"	5	T 3160 1,001 "	.....	50.06	250.30
"	8	T 3166 1/2" End Mills	.....	21.06	168.48
"	3	T 1105 Facing Cutters	.....	2.78	8.34
"	2	T 1101 2nd Facing Bar	.....	34.53	69.06
"	7	T 1279 Radius Cutter	.....	6.83	47.81
"	3	T 2159 Boring Tool	.....	6.05	18.15
"	3	T 2162 Boring Tools	.....	6.90	20.70
"	5	T 3200 Boring Bar Pins	.....	15.93	79.80
Total					5,636.46

153

Sheet #19.

Contract 1498.

Inventory of Tools & Fixtures.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
87	2	T 1098 1.982 Cutters	.....	4.69	9.38
"	3	T 1119 Facing Cutters	.....	3.58	10.74
"	2	T 2063	.....	16.46	32.92

3	T	1102	"	7.90
"	"	"	"	4.84
1	T	2044	"	1.20
4	T	1080	"	5.25
5	T	1043	"	2.80
13	T	1041	"	5.75
"	"	"	"	5.62
3	T	1167	1 1/4 x 2 Counterbores	2.64
"	"	"	"	"
2	T	2049	Finish Cutters	"
"	"	"	"	"
1	T	2048	Rough	"

154

7	T	1132	Facing	3.79
"	"	"	"	3.45
7	T	1131	"	66.17
"	"	"	"	4.65
3	T	3131	Bar	8.25
6	T	1198	1 1/8 x 2 C' Bores	10.70
"	"	"	"	11.46
4	T	1075	1.840" Cutters	10.39
"	"	"	"	22.99
3	T	3224	47/64 Drills	27.55
"	"	"	"	30.53
2	T	1128	7/8" 4 Lipped Drill	23.71
"	"	"	"	61.91
4	T	3307	3/4" Mach. Reamers	18.40
"	"	"	"	20.30
1	T	1177	4 Lipped Drill	17.27
"	"	"	"	12.90
6	T	2149	C' Bores	26.21
"	"	"	"	"
2	T	3158	47/64 Bor. Bar	"
"	"	"	"	"
2	T	3156	63/64 "	"
"	"	"	"	"
1	T	3155	Drill Socket	"
"	"	"	"	"
1	T	3129	" Holder	"
"	"	"	"	"
3	T	3232	Tapper Socket	"
"	"	"	"	"
2	T	2177	Shell Reamers	"
"	"	"	"	"
3	T	3208	C' Bores	"
"	"	"	"	"
2	T	1287	Spot Facers	"
"	"	"	"	"

26.53
24.15
198.51
27.90
33.00
32.10
22.92
41.56
22.99
165.30
61.06
47.42
61.91
18.40
60.90
34.54
38.70
52.42

Inventory of Tools & Fixtures.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
155					
"	1	T 4111 #11 Arbor for End Mill.....	.....	18.19	18.19
"	1	T 1288 3 Lipped Core Drill.....	.....	292.96	292.96
"	1	T 1288 Spot Facers.....	.....	18.38	18.38
"	1	T 3171 63/64 Drill.....	.....	39.68	39.68
"	1	T 2145 1.436 Core Drill.....	.....	32.22	32.22
"	2	T 1200 Reamers .....	.....	9.29	18.58
"	1	T 3288 Cutter .....	.....	11.67	11.67
"	1	T 3235 .745 Mach Reamer.....	.....	13.35	13.35
"	2	T 1112 Boring Bar Cutters.....	.....	7.88	15.76
"	1	T 1111 " .....	.....	310.37	310.37
"	3	T 2084 5.470 Cutters.....	.....	14.80	44.40
"	3	T 2085 1/2" " .....	.....	15.71	47.13
"	1	T 3198 Fly " .....	.....	90.49	90.49
"	2	T 3225 4.250 "	415#	16.64	33.28
"	1	Reamer .....	.....	17.06	17.06
"	1	1 x 3/4 C' Bore.....	.....	14.38	14.38
"	1	Tool for Piston for 49159-2.....	.....	25.00	25.00
88	1	T 3229 Arbor .....	.....	41.80	41.80
156					
"	2	T 3165 Cutter Arbor.....	.....	23.99	47.98
"	1	T 3287 Facing Bar.....	.....	50.29	50.29
"	1	T 3228 Arbor .....	.....	53.17	53.17
"	1	T 3140 " .....	.....	23.45	23.45
"	1	T 3167 Boring Bar.....	.....	15.92	15.92

"	1	T 3140	Cutter Arbor	43.14
"	1	T 3141	"	50.06
"	13	T 1088	1.998 Mach. Taps	31.19
"	2	T 3225	4.250 Cutters	16.64
"	1	T 3227	Arbor & Cutter	109.85
"	9	T 3238	Shell End Mills	28.21
"	1	T 3272	Arbor	31.51
Total				3,545.85

157

Sheet #20.

Contract #1498.

Inventory of Tools & Fixtures.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
88	4	T 3193 Facing Bar	.....	51.12	204.48
"	1	T 1101 Spot Facer	.....	27.66	27.66
"	2	T 3321 1.501 Hand Reamers	.....	40.47	80.94
"	2	T 3161 Facing Bar	.....	99.92	199.84
"	2	T 1033 Drill Holder	.....	2.06	4.12
"	1	T 1045 Boring Bar	.....	57.61	57.61
"	1	T 1079 Boring Bar	.....	48.80	48.80
"	1	T 2051 Reamer	.....	91.13	91.13
"	1	T 1269 Boring Bar	.....	42.97	42.97
"	1	T 3323 Arbor	.....	64.46	64.46
"	1	T 2054 Facing Bar	.....	37.28	37.28
"	2	T 3135 Cutters	.....	3.00	6.00
"	1	T 2052 Facing Bar	.....	114.44	114.44

Inventory of Tools & Fixtures.—Continued.

Case No.	Quantity.	Article.	Gross weight.	Price each.	Total price.
158					
"	2	T 3307 Machine Reamers.....	.....	10.39	20.78
"	1	T 3305 ".....	.....	8.77	8.77
"	3	T 3306 ".....	.....	2.36	7.08
"	2	T 1118 Facing Cutters.....	.....	13.32	26.64
"	1	T 3136 Arbor.....	560 Lbs.	8.00	8.00
"	1	T 2029 Boring Bar.....	.....	304.23	304.23
"	1	T 2072 Oil Groove Tool.....	.....	145.88	145.88
"	1	T 3212 Radius Mill Fixture.....	.....	896.33	896.33
"	1	T 3215 Straddle Mill Fixture.....	.....	130.53	130.53
"	1	T 3271 Yoke Mill Fixture.....	.....	1,346.91	1,346.91
"	3	T 1110 Boring Bar Driver.....	.....	38.16	114.48
"	12	T 3132 Facing Cutters.....	.....	6.03	72.36
"	4	T 3162 " Bars.....	.....	5.57	22.28
"	6	T 3233 Cutters.....	.....	10.64	63.84
"	2	T 1086 Reamers.....	.....	34.54	69.08
"	1	T 3125 Shank Cutter.....	.....	11.56	11.56
"	1	T 2005 Hollow Mill for Trunions on Slides.....	.....	268.15	268.15
Total					<u>4,496.63</u>

Sheet #21.

Contract #1498.

Recapitulation of Tools, Fixtures, and Supplies Shipped March 26,
1920, via Penn. R. R. Car No. L. V. 62888—Seals #479-480.

Sheet #	1	1,063.48
	2	1,677.40
	3	931.48
	4	3,145.08
	5	439.31
	6	157.24
	7	865.53
	8	254.55
	9	3,826.28
	10	2,806.61
	11	763.62
	12	145.78
	13	180.91
	14	404.57
	15	216.30
	16	87.35
	17	9,490.31
	18	5,636.46
	19	3,545.85
	20	4,496.63
Total		40,154.74

Sheet #1.

Quan.	Article.	Price, each.	Total price.
3	T 1055 Grey Iron Cast	.30	1.08
2	T 1093 "	.065	1.30
1	T 1157 "	.055	5.56
1	T 1209 "	.055	2.42
6	T 2008 D "	.065	30.55
5	T 2008 E "	.065	17.88
1	G 2045 "	.055	5.67
1	T 2081 A "	.055	4.84
1	T 2083 "	.05	1.50
2	T 2091 "	.055	8.69
1	T 2095 "	.055	1.10
1	T 2097 "	.055	1.21
2	T 2103 A "	.055	3.09
1	T 2107 "	.055	2.26
1	T 2109 B "	.055	.99
1	T 2114 A "	.055	.72
161			
1	T 2114 B "	.055	1.71
1	T 2115 "	.055	2.09
1	T 2116 A "	.055	.77
2	T 2119 "	.055	.88
1	T 2123 "	.055	.55
1	T 2125 "	.055	.83
1	T 4021 "	.06	5.58
1	T 4115 "	.055	1.71

1	T 4114	"	"	"	107 #	.055 "	5.89
1	T 2060 A	"	"	"	145 #	.055 "	7.98
1	T 1059	"	"	"	500 #	.05 "	25.00
1	T 2002 A	"	"	"	1431 #	.05 "	71.55
1	T 2170	"	"	"	123 #	.055 "	6.77
2	G 3053	"	"	"	3552 #	.065 "	230.88
2	G 3053 D	"	"	"	406 #	.065 "	26.39
1	G 3119 B	"	"	"	174 #	.065 "	11.31
1	G 3146	"	"	"	67 #	.058 "	3.89
1	G 3201	"	"	"	267 #	.055 "	14.69
1	T 3227	"	"	"	282 #	.055 "	15.51
2	T 3293	"	"	"	1350 #	.065 "	87.75
1	T 4076	"	"	"	46 #	.055 "	2.53
1	T 4179	"	"	"	31 #	.055 "	1.71
1	10 x 10 C. I. Angle.	"	"	"	75 #	.06 "	4.50
5	12 x 12 "	"	"	"	582 #	.06 "	34.92
9	Steel Drums Cutrite Oil.	"	"	"	455 Gal.	.79 gal.	359.45
9	Steel Drums	"	"	"	.....	10.50 ea.	94.50
2	4' x 8' Surface Plates	"	"	"	.....	311.94	623.88
4	30 x 66 "	"	"	"	.....	281.15	1,124.60
1	4' x 7' "	"	"	"	.....	379.69	379.69
1	36" x 48" "	"	"	"	.....	246.88	246.88
1	34" x 67" "	"	"	"	.....	285.34	285.34
1	18" x 24" "	"	"	"	.....	55.00	55.00
5	16" x 22" "	"	"	"	.....	53.00	265.00
2	8" x 12" "	"	"	"	.....	12.50	25.00
1	8" x 22" "	"	"	"	.....	19.00	19.00

Sheet #1.—Continued.

Quan.	Article.	Ft.	Lb.	Price, each.	Total price.
1	Cast Iron Stand for 34 x 67" Plate.			63.00	63.00
2	28 x 36" Angle Plates.			138.41	276.82
	Total				4,472.49
163					
1/4"	Round Machine Steel	60	10	4.60 cwt.	.46
5/16"	"	178	57	4.465 "	2.55
3/8"	"	154' 8"	56 1/2	4.365 "	2.47
1/2"	"	93' 10"	63	4.25 "	2.68
9/16	"	4' 4"	3 3/4	4.25 "	.16
3/4"	"	5' 11"	3 3/4	4.05 "	.15
7/8"	"	13' 7 1/2"	27	4.20 "	1.13
1"	"	14' 7"	39	4.10 "	1.60
1 1/8"	"	22' 6"	77	4.10 "	3.16
1 1/4"	"	49' 2"	207	4.10 "	8.49
1 3/8"	"	21' 10"	112	4.10 "	4.59
2 1/2"	"	12' 1"	204 1/2	4.10 "	8.38
2 3/8"	"	4' 6"	82 1/2	4.10 "	3.38
1 7/8"	"	3' 8"	35 1/2	4.10 "	1.46
5"	"	13'	942-670	4.55 "	30.49
			272	10.00 "	27.20
164					
5 1/2"		10' 8"	931 1/2	10.00 "	93.15

1 3/4 x 5	"	"	16'	473	4.25	"	20.10
2 x 2 1/2	"	"	10' 6"	177 1/2	4.25	"	7.54
1 1/2 x 6	"	"	9' 11"	309 1/2	4.185	"	12.95
3/16 x 3 1/2	"	"	15' 9"	35	4.715	"	1.65
5/8 x 3 1/2	"	"	22' 6"	168	4.04	"	6.80
1 1/2 x 1 3/8	"	"	9' 9"	27	4.10	"	1.11
1 1/2 x 2	"	"	16' 6"	54	4.10	"	2.21
3/8 x 2	"	"	28' 10"	72 1/2	4.70	"	3.41
1/4 x 1 3/4	"	"	5' 4"	8	4.15	"	.33
1/4 x 1 1/4	"	"	5'	5	4.10	"	.21
5/8 x 3	"	"	57' 6"	361-230	4.115	"	9.46
				104	4.05	"	4.21
5/8 x 4	"	"	9' 5 1/2"	27	4.05	"	1.09
2 1/8	"	"	35' 3"	82	4.05	"	3.32
165	"	"		536 1/2	4.10	"	22.00
	Square						
2	"	"					
1 1/4 x 1 1/2	"	"	4' 2 1/2"	58 1/2	4.10	"	2.40
1 x 1 3/4	"	"	12' 3"	78	4.33	"	3.38
1 1/2 x 4	"	"	21' 3"	27 1/2	4.10	"	1.13
1 1/2 x 3	"	"	3' 10"	79	4.20	"	3.32
	"	"	20' 8"	345-284	4.20	"	11.93
				61	4.30	"	2.62
1 1/2 x 2	"	"	1' 5"	15	4.10	"	.62
1 x 5	"	"	5' 1"	87	4.05	"	3.52
2 x 5	"	"	2' 11"	88	4.35	"	3.83
1 x 2	"	"	24' 3"	194	4.10	"	7.95
1 1/4 x 3	"	"	18' 3"	231-229	4.73	"	10.83
				2	5.00	"	.10

Sheet #1.—Continued.

Article.	Ft.	Lib.	Price, each.	Total price.
1½ x 5	8' 1"	205½-127	4.30	5.46
5/8 x 2¾	11' 5½"	78½	4.15	3.26
1/16 x 2	17' 3"	67	4.10	2.75
1/8 x 1½	5' 7"	9	5.05	.45
7/8 x 1¼	8' 6"	4	4.10	.16
		30	4.10	1.23
166				
(Note: Machine Steel Painted Pink)				
5/8 x 5	1' 7"	17½	13.00	2.28
5/8 x 4¾	3' 8"	37	11.02	4.08
3/8 x 3	13'	50	8.96	4.48
3/8 x 3½	8' 2"	37½	11.00	4.13
1/4 x 3½	19'	56	11.20	6.27
1/4 x 2½	11' 1"	23½	8.80	2.07
				401.70

Inventory of Steel and Oil.

	Article.	Ft.	Lb.	Price, each.	Total price.
1½ x 3	Flat Cold Roll Steel.....	11' 9"	60-57	@ 8.80 Cwt.	5.11
¾ x 2	" " "	12' 8"	3	@ 8.80 "	.26
¼ x 1¾	" " "	1' 3½"	60-57	@ 8.96 Cwt.	5.11
⅝ x 1½	" " "	1' 4"	2	@ 9.00 "	.18
1⅝	Square " "	20' 2"	3½	9.40 "	.33
1½	" " "	18' 7"	183	7.84 "	14.35
7/16	" " "	20' 10"	129	7.84 "	10.11
½ x ¾	Flat " "	5' 11"	17	9.52 "	1.62
⅜ x ¾	" " "	4' 6"	8	8.96 "	.72
¾	Square " "	26' 7½"	4	11.20 "	.45
7/8	" " "	11' 7"	51	8.68 "	4.43
1 1/16	" " "	8' 10"	30	7.70 "	2.31
1¼	" " "	6' 11"	36½	7.84 "	2.86
⅝ x 1	Flat " "	11' 3"	36	7.84 "	2.82
			26-22	@ 8.96 "	1.97
¼ x ¾	" " "	2' 6½"	4	@ 8.80 "	.35
½	Square " "	3' 11"	1½	14.20 "	.21
9/16	" " "	10' 4½"	3½	9.52 "	.33
¾	" " "	55' 10"	11	9.52 "	1.05
168	" " "		26½	9.90 "	2.62
5/16	" " "	42' 7"	14	11.00 "	1.54

Inventory of Steel and Oil.—Continued.

Article.	Ft.	Lb.	Price, each.	Total price.
1/4	13' 7"	3	11.20	.34
1 1/2	9' 2"	61	7.70	4.70
1 5/16	5' 7"	28	7.70	2.16
1 1/8	12' 5"	46	7.70	3.54
3/4	12' 8 1/2"	21	8.52	1.79
7/8	12' 9"	28 1/2	8.35	2.38
15/16	16' 11"	43	7.70	3.31
3/8	4' 9"	1 1/2	9.90	.15
1 1/16		104	6.00	6.24
1 1/8		54	6.00	3.24
1 3/16	59' 9"	212 1/2	5.50	11.69
1 1/4	20'	82	5.94	4.87
7/8	21' 11"	45	6.16	2.77
15/16	37' 10"	89	5.94	5.29
13/16		63-61 1/2	8.40	.55
3/4		56 1/2	6.16	3.48
169	13' 10"	26-14 1/2	6.16	.89
9/16		11 1/2	7.28	.84
1 1/2	41' 4"	12	6.72	.81
7/16	48'	22 1/2	5.18	1.17
3/16	139' 2"	24 1/2	4.844	1.19
		13-1	7.50	.08
		7	8.25	.58
				.12

[illegible]

Sheet #3.

Contract #1498.

Inventory of Steel and Oil.

Article.	Ft.	Lib.	Price, each.	Total price.
2 3/16 Round Cold Roll Steel.....	12' 4"	225	5.50 Cwt.	12.38
" " ".....	13' 9"	195	5.50 "	10.69
" " ".....	"	729-33	5.50 "	1.82
2 1/4 " " ".....	"	696	5.60 "	38.98

Inventory of Steel and Oil.—Continued.

	Article.	Ft.	Llb.	Price, each.	Total price.
171	"	"	"	"	"
2 3/8	"	33' 8"	508	5.60	28.45
4 3/4	"	20' 5"	1231-1096	7.28	79.79
	"	"	135	7.15	9.65
2 1/2	"	31'	520	5.60	29.12
2 7/16	"	22'	365	5.50	20.08
4 1/16	"	1' 6"	66	6.00	3.96
3 1/2	"	4' 8"	152 1/2	5.75	8.77
3 5/16	"	5'	145 1/2	5.50	8.00
3	"	19' 11"	477-1	5.75	.06
	"	"	476	6.00	28.56
2 5/8	"	16' 8"	306	5.60	17.14
2 3/4	"	20'	404	5.60	22.62
1 15/16	"	3' 8"	37 1/2	6.5625	2.46
3 1/4	"	20"	48	4.175	2.00
2 7/8	"	89'	1,945	5.50	106.98
2 15/16	"	"	4,337	5.00	216.85

(NOTE: Cold Rolled Steel painted yellow.)

6"	Round Tool Steel.....	7' 5"	753 1/2	22.50	169.54
5"	" ".....	3' 8"	260 1/2	26.00	67.73
172	"	"	"	"	"
4"	" ".....	7' 11"	335	25.70	86.10
1 x 1 1/2	Flat " ".....	7' 8"	43 1/2	25.00	10.88

Size	Shape	Weight per foot	Length	Volume	Weight
1 1/2	Square	"	8' 2"	60	23.60
1 3/8	"	"	10' 3"	63	24.00
3/8 x 1 1/2	Flat	"	7' 7"	14 1/2	25.00
1/4 x 2	"	"	10' 4"	17	25.50
3/8 x 2	"	"	6'	15 1/4	25.00
1/4 x 1 1/2	"	"	15' 5"	6 1/2	26.50
5/8 1"	Square	"	8'	27 1/2	24.20
1 1/2	"	"	7' 2"	6	24.50
5/8	Round	"	14' 10"	15 1/4	25.50
1 1/2	"	"	15' 8"	10 1/2	25.50
3/8	"	"	4' 6"	1 1/2	25.60
3/4	"	"	3' 11"	5 1/2	43.00
7/8	"	"	4' 9"	9 1/2	24.00
1 1/4	"	"	6' 7"	27 1/2	25.50
173					
1 1/4	Square	"	2' 1"	12	25.00
3/8 x 3/4	"	"	2' 7"	2 1/2	25.00
3 1/2	Round High Speed Steel	"	9' 2 1/2"	337 1/2-336 1/2	@ 2.65
2 1/4	"	"	9' 1"	1 1/2	@ 2.30
2 1/2	"	"	4' 11 3/4"	137 1/2	2.045
1 13/16	"	"	14' 6 1/2"	93 1/2	2.044
1 1/4	"	"	4' 6"	123 1/2	2.022
1 3/8	"	"	7' 9"	21	2.03
				43 1/4	2.02
					688.80
					3.45
					281.19
					191.11
					249.72
					42.63
					87.37
					2,615.72

(NOTE.—Tool Steel painted green and white.)

3 1/2	Round High Speed Steel.....
2 1/4	" "
2 1/2	" "
1 13/16	" "
1 1/4	" "
1 3/8	" "

174

Sheet #4.

Contract #1498.

Inventory of Steel and Oil.

	Article.	Ft.	Lb.	Price, each.	Total price.
1	9/16" Round High Speed Steel.	9' 5"	70	2.03	142.10
1 1/8	"	11' 2"	42	2.03	85.26
1	"	6' 2 1/2"	18	2.03	36.54
1/4	"	8' 3"	1 1/2	2.115	3.17
3/8	"	20' 1"	8 1/2	2.065	17.55
7/32	"	11' 6"	1 3/4	2.115	3.70
1/4	Square	12'	2 1/2	2.145	5.36
7/16	"	8' 3"	6 1/4	2.065	12.91
3/4 x 1 1/2	Flat	20' 6 1/2"	86 1/2	2.02	174.73
1 x 1 1/4	"	37' 6 1/2"	175-95	(@) 2.03	192.85
1 3/4 x 2	"	20' 1"	80	(@) 2.029	162.32
			270-127	(@) 2.028	257.56
175					
5/8 x 1 1/4	"	17' 11"	143	(@) 2.031	290.43
7/8 x 1 3/4	"	8' 3 1/2"	53 1/2	2.02	108.07
7/16 x 2	"	58' 11"	48	2.025	97.20
			190 1/2-138	(@) 2.051	283.04
			35	(@) 2.025	70.88
7/16 x 1 1/2	"	48' 9 1/2"	17 1/2	(@) 2.395	41.91
			123 1/2-111	(@) 2.049	227.44
			1 1/2	(@) 2.049	3.07

9/32 x 2	"	"	"	"	9' 5"	30 1/4	@	2.05	"	62.01
5/16 x 2	"	"	"	"	4' 5"	20		2.05	"	41.00
3/4 x 4	"	"	"	"	7'	11		2.06	"	22.66
9/16 x 1 1/8	"	"	"	"	28' 3"	66		2.17	"	169.26
1 5/16 x 1 1/2	"	"	"	"	19' 11"	152		2.04	"	134.64
5/8 x 1	"	"	"	"	15' 11"	37		2.026	"	307.95
1 1/2 x 1	"	"	"	"	20' 10"	39		2.03	"	75.11
7/16 x 1	"	"	"	"	21' 11 1/2"	33 1/4		2.045	"	79.76
176								2.05	"	68.16
5/16 x 1	"	"	"	"	3' 11"	4 1/2		2.056	"	9.25
1/8 x 7/8 x 3/32	"	"	"	"	55' 6"	19		2.02	"	38.38
1 1/2 x 2 1/8	"	"	"	"	9' 3"	111		2.048	"	227.33
1 1/2 x 2 1/2	"	"	"	"	20' 5"	264		2.05	"	541.20
1 1/4 x 1 1/2	"	"	"	"	10' 7"	79		2.026	"	160.05
5/16 x 1 1/4	"	"	"	"	13' 2 1/2"	19 1/4-6	@	2.06	"	12.36
						13 1/4	@	2.051	"	27.18
3 5/8"	Round High Speed Steel				13' 6"	44		2.065	"	90.86
5/16	Square	"	"	"	1' 6"	1 1/2		2.33	"	1.17
3/8	"	"	"	"	1'	1 1/2		2.305	"	1.15
1 3/8	"	"	"	"	1'	8		2.026	"	16.21
5/8 x 1 1/2	"	"	"	"	9 1/4"	21 1/2		2.02	"	5.05
5/8 x 2	"	"	"	"	1'	4 3/4		2.027	"	9.63
5/8 x 4	"	"	"	"	8'	6 1/4		2.04	"	12.75
1 x 2	"	"	"	"	2' 4"	18		2.027	"	36.49
1 1/4 x 2	"	"	"	"	11 1/2"	9		2.05	"	18.45
1 1/2 x 2	"	"	"	"	1' 10"	21		2.04	"	42.84
1 9/16 x 2	"	"	"	"	8 1/2"	8 1/2		2.02	"	17.17

177

Inventory of Steel and Oil.—*Continued.*

Article.	Ft.	Lb.	Price, each.	Total price.
3½ Round Nickel Steel.....	8' 4"	283	.135 "	38.21
(NOTE.—High Speed Steel Painted Red and White.)				
7 bls. Quenching Oil.....		350 Gal.	.59 Gal.	206.50
				<hr/> 4,747.58

Contract #1498 R. M. #3.
Via Penn. R. R.
Car A. T. S. F. #44405.
Seals 483-84.

Recapitulation of Steel and Oil Shipped to Supply Officer, Navy Yard, Washington, D. C.

Sheet #1.....	\$401.70
" #2.....	336.98
" #3.....	2,615.72
" #4.....	4,747.58
<hr/>	
Total	\$8,101.98

List of Machinery & Equipment as Shown in Claim #1498.

250-3" A. A. Gun Mounts #2.

Inv.	Date recd.	Vendor.	Description.	Invoice price.
5/31/18.	6/ 7	Homer Strong.	G. & L. Horiz. Boring Mill.	5,300.00
7/11/18.	7/22	"	"	5,950.00
9/24/18.	9/25	"	"	5,600.00
5/24/18.	6/11	The King Machine Tool Co.	62" King Vert. Boring Mill.	8,200.00
7/26/18.	8/ 1	Iznesshoff & Co.	Gould Eberhard 36" Gear Hobber.	4,300.00
7/20/18.	7/30	Syracuse Supply Co.	American Plain Rad. Drill.	3,130.00
7/ 6/18.	7/15	"	Amer. Pl. full Univ. Rad. Drill.	4,350.00
7/ 6/18.	7/18	Brown & Sharpe Mfg. Co.	B. & S. #4 B Pl. Mill Machine.	3,230.00
10/ 1/18.	10/19	" of New York Inc.	" " #5 "	3,940.00
10/11/18.	10/16	Manning Maxwell & Moore.	Putnam Gap Lathe 22 x 46 x 8.	1,150.00
10/15/18.	10/16	"	" " "	1,150.00
7/14/18.	24/18	A. R. Williams Mach. Co.	Bridgeford Lathe.	2,955.00
1/ 5/18.	1/25	Brown & Sharpe Mfg. Co.	#3 B. & S. Vert. Miller.	2,830.00
179				
7/24/18.	8/22	Canadian Fairbanks Morse Co.	" " " "	2,830.00
7/11/18.	7/23	A. R. Williams Mach. Supply Co.	Blount Speed Lathe.	85.00
7/31/18.	9/20	Canadian Fairbanks (card).	2 1/2 B Milwaukee Vert. Miller.	2,590.00
8/26/18.	9/20	Syracuse Supply Co.	" Plain "	2,700.00
7/20/18.	8/ 6	Henry Prentiss & Co. Inc.	#4 Cincinnati Miller.	3,810.00

List of Machinery & Equipment.—Continued.

Inv.	Date recd.	Vendor.	Description.	Invoice price.
8/ 5/18.	8/20	" " "	36 x 28 x 8 Cincinnati Planer.....	4,361.00
8/ 5/18.	8/20	" " "	" " " "	4,361.00
6/25/18.	7/15	Syracuse Supply Co.....	25" Weigel Drill Press.....	630.00
10/ 4/18.	10/ 9	The Kent Owen Machine Co.....	#1 Toledo R. B. H. S. Miller.....	330.00
10/ 9/18.	10/19	" " "	#1 " " " "	330.00
5/27/18.	6/ 8	Henry Prentiss Co.....	24" G. & E. Shaper.....	1,500.00
5/27/18.	6/18	" " "	" " " "	1,500.00
9/10/18.	10/ 1	McCarthy Brothers & Ford.....	Electric Crane.....	3,150.00
10/ 8/18.	10/24	Niles Bement-Pond Co.....	Steam Hammer.....	1,000.00
Total Cost.....				\$81,262.00
Total amount realized by sale.....				57,073.25
Loss				\$24,183.75

III. *General Traverse.*

No demurrer, plea, answer, counterclaim, setoff, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IV. *Argument and Submission of Case.*

On May 24, 1922, this case was argued and submitted on merits by Mr. Lyman M. Bass, for plaintiff, and by Mr. Alexander H. McCormick, for defendant.

V. *Findings of Fact, Conclusion of Law, and Opinion of the Court by Downey, J.*

Entered June 26, 1922.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

In or about the month of October, 1917, the Russell Motor Car Company, the plaintiff, became and ever since has been a corporation duly organized, created, and existing under and by virtue of the laws of the State of Delaware, and on or about November 27th, 1917, duly complied with the laws of the State of New York so as to properly authorize it to carry on business in the said State.

II.

In the month of May, 1918, the plaintiff entered into a written contract dated May 14, 1918, with the United States, represented by F. D. Roosevelt, Acting Secretary of the Navy, whereby it undertook to make and deliver 250 3" antiaircraft gun mounts Mark "XI, Modification 2" complete with sights (except telescopes) Mark "XVI, Modification 1" at the agreed price of \$7,860 each. Delivery of the mounts was required under the said contract within the following stipulated periods:

10 mounts on or before October 31, 1918, and additional mounts as follows:

15 before November 30, 1918.

20 before December 31, 1918.

25 before January 31, 1919.

60 before February 28, 1919.

60 before March 31, 1919.

60 before April 30, 1919.

Said contract so entered into was given department No. 1498, and was made after formal tender submitted in competition with other bidders. A full and true copy of said contract, together with the specifications therein referred to, are set forth in and annexed to the amended petition in this proceeding entitled "Exhibit A," and made a part hereof by reference.

The mounts and sights provided for in said contract were intended for use on and were a part of the equipment of vessels of the Navy.

III.

In the month of November, 1917, the plaintiff herein had entered into a contract dated November 3d, 1917, with the United States Government, represented by F. D. Roosevelt, Acting Secretary of the Navy, whereby it undertook to make and deliver 400 3" antiaircraft gun mounts, complete with sights except telescopes, at a price of \$88.40 each, the contract having department No. 949, together with the specifications attached thereto.

The plaintiff was required under this said last-mentioned contract to deliver the mounts required thereunder, as follows:

15 mounts on or before May 15, 1918, and additional mounts as follows:

- 25 before June 15, 1918.
- 40 before July 15, 1918.
- 50 before August 15, 1918.
- 50 before September 15, 1918.
- 50 before October 15, 1918.
- 50 before November 15, 1918.
- 60 before December 15, 1918.
- 60 before January 15, 1919.

IV.

The kind, character, and quality of the aircraft gun mounts and sights were the same under each of the above-mentioned contracts designated as Nos. 949 and 1498, respectively, the only difference being in the terms or specifications in said two contracts being those relating to the price of the gun mounts and sights to be delivered thereunder, as well as the quantity of gun mounts and sights to be manufactured and delivered and the delivery dates thereof, which said items of difference are set forth above in findings of fact Nos. II and III.

V.

Prior to the making of either of the above contracts there was in existence a Canadian corporation known as the Russell Motor Car Company (Ltd.), which, during 1915, 1916, and 1917, had become extensively engaged in the manufacture of munitions for the British Government. It employed about 6,000 men, was officered by an experienced and employed in responsible positions men of ability and skill, and had built up a highly efficient organization.

Officers of the United States, seeking for a suitable concern to undertake the manufacture of further gun mounts, conferred with the president of a concern then engaged in that line of work for the Government and he recommended the Canadian company referred to, and it was invited to submit a bid which it did. Its bid was acceptable, but the fact that it was a Canadian corporation led to some discussion resulting in the conclusion by the bidder to incorporate a company in the United States and erect a plant for this work. The plaintiff company was thereupon incorporated under the laws of the State of Delaware with a capital stock of \$2,500,000.00, all of which was paid in and a large part of which was subscribed by the Canadian corporation.

VI.

The plaintiff corporation, in the fall of 1917, after the making of said contract No. 949, acquired and purchased a large plant in the city of Buffalo, N. Y., and immediately provided the nucleus of the organization, manufacturing, purchasing, executive, accounting and cost keeping, made up of men who had been trained in the manufacture of munitions and who, for the most part, had carried out the munition manufacturing program for the said above-described Russell Motor Car Company (Ltd.) of Canada.

VII.

The gun mount and sight is an intricate piece of ordnance weighing approximately six thousand pounds and requires the handling of large pieces of material, and at the same time involves the greatest precision, particularly in the elevation of the gun. The variation of a thousandth of an inch in the measured distance of the piece will throw out the result of the gun fire owing to the length of travel of the projectile. Operators of great mechanical skill were required.

VIII.

The time from November of 1917 to March of 1918 was occupied in the work of installing machinery, equipping the plant, and designing and manufacturing the jigs, tools, and fixtures which were necessary for the accurate production of the gun mounts and sights involved.

About March of 1918 actual work on the material for these gun mounts and sights required under the first contract was begun, the Navy maintaining inspectors in the plant and keeping in constant touch with the progress of the work and the quality and accuracy of the workmanship.

After the making of said contract No. 1498, plaintiff corporation secured additional premises, machinery, tools, ordered extra material, and proceeded and did shop work as well as making contracts for material with subcontractors for castings, forgings, and steel part to carry out said contract.

184

IX.

On September 19, 1918, the plaintiff wrote the Navy Department as follows:

"Sept. 19, 1918.

"Navy Dept., Bureau of Ordnance,
Washington, D. C.

"Attention Commander Richmuth.

"Re Contract 949 for 400 3" Antiaircraft Gun Mounts,
and " 1498 " 250 3" " " " "

"DEAR SIR:

"We propose to make deliveries of gun mounts as follows:

1918.	Shipped.	1919.	Shipped.
June	5	January	7
July	20	February	7
August	40	March	7
September	50	April	7
October	60	May	4
November	60		
December	75		

"2. We would respectfully ask your permission to allow us to app all shipments on mounts on the first contract until same is completed, and then follow with shipments on the second contract. This will greatly simplify the handling of all records and manufacturing of parts in the factory. You will note from deliveries given in the first paragraph that in the month of February the first fifty mounts would complete contract 949 and the balance of 60 mounts be delivered in February and the deliveries in the months of March, April, and May would complete the second contract #1498 of 250 mounts.

"3. Extension of contract. We have been seriously delayed supplying gun mounts in accordance with deliveries outlined in our contracts due to conditions beyond our control, and believe that in connection with contract #949 specifying 400 3" antiaircraft gun mounts that we are entitled to an extension of 90 days.

"In regard to our second contract #1498 for 250 3" antiaircraft gun mounts, we believe we are entitled to some extension due to difficulties in securing material, but at this time are not prepared to give any idea as to the amount of extension that should be allowed.

"We are in the meantime proceeding to do everything possible to hurry this work along, and at the proper time will be pleased to discuss with you the matter of extension."

"Will you kindly let us have the desired information as soon as possible?"

"Yours very truly,

"RUSSELL MOTOR CAR CO., INC.
"C. R. BURT, General Manager."

185 On October 11, 1918, the claimant wrote Admiral Ralph Earle, Chief of the Bureau of Ordnance of the Navy Department as follows:

"October 11, 1918.

"Admiral Ralph Earle,
"Navy Dept., Bureau of Ord.,
"Washington, D. C.

"Re Contr. 949-400 3" A. A. Mounts; Contr. 1498-250 3" A. A. Mounts.

"DEAR SIR:

"Your letter of September 25th received and note that you grant our request relative to shipping all of the gun mounts on the 1st contract 949 until the order is completed and follow with shipments applying on the second contract.

"We thank you for granting us this concession, which is entirely satisfactory.

"Very truly, yours,

"RUSSELL MOTOR CAR CO., (INC.).
"C. R. BURT,
"Gen. Mgr."

On September 25, 1918, the Navy Department Bureau of Ordnance, by Admiral Ralph Earle, Chief of said Bureau of Ordnance, wrote the plaintiff as follows:

"Navy Department,

"Bureau of Ordnance,

"Washington, D. C., Sept. 25, 1918.

"33901/373 (M2-5) O.

"EA.

"Subject: Contr. 949 for 400—3" A. A. Mounts and

" 1498 " 250—" " "

"Reference: (a) Company's letter of Sept. 19, 1918.

"SIRS:

"Receipt is acknowledged of the company's letter of Sept. 19, containing in the first paragraph proposed schedule of deliveries of mounts on the above contracts.

"The company's request for permission to apply all shipments of mounts on the first contract, No. 949, until same is completed, is approved.

"With reference to the company's remark concerning extension of time on contract No. 949; in order that proper consideration may be made to such claims at the expiration of the contract, it is suggested that your company forward the bureau promptly written notification of specific instances where delays beyond your control

have occurred in accordance with the stipulation mentioned in the contract.

"Very truly, yours,

"RALPH EARLE.

"Russell Motor Car Co.

"Via: Naval inspec. of ordnance, Homestead Steel Works, Munhall, Pa."

The plaintiff company manufactured and was able to deliver to the United States in the month of October, 1918, ten gun mounts under contract 1498 and manufactured and was able to deliver under said contract fifteen gun mounts in the month of November, 1918,

and would have made such deliveries on said contract but for 186 the consent of the United States to changed deliveries as set out in the above correspondence and to application of said ten and fifteen gun mounts on contract 949. Relying upon the consent of the United States to said amended schedule of deliveries said ten and fifteen gun mounts so manufactured in October and November, respectively, with all other mounts manufactured during those months, were delivered to the United States to apply on said contract 949.

Contract 949 was amended so as to provide for 260 mounts with sights and 140 without sights, all of which were made and delivered. They complied with contract requirements and were accepted and paid for in full, and by reason of extension of time granted there were no deductions for delay.

Deliveries under this contract were completed in June, 1919.

X.

On November 18, 1918, Admiral Ralph Earle, acting for the Navy Department, wrote the plaintiff as follows:

"Navy Department,

"Bureau of Ordnance,

"Washington, D. C., Nov. 18, 1918.

"Subject: Contracts Nos. 949 and 1498 for 650 3" A A mounts, Mark XI, Mod. 2.

"GENTLEMEN:

"In view of present conditions the bureau desires that the manufacture of gun mounts covered by the above contracts be gradually decreased, the production of the company's peace-time products being resumed as soon as possible, so that a minimum of economic disturbance will be felt during the transition.

"To this end the company is urged to make immediate arrangements for the reduction and eventual stoppage of production of materials under the above contracts, and to substitute, therefore, the company's usual lines of commercial products. Whenever it becomes necessary to reduce the working force of the company, because

of post bellum retrenchments, employees should be given one week's notice prior to discharge.

"The rapidity with which the manufacture of commercial articles can be entered into depends, to a considerable extent, upon the company's ability to procure the necessary materials. In this connection attention is invited to the fact that the War Industries Board is available for assistance in obtaining raw materials, and that, in addition, the bureau will be glad to assist the company whenever it can do so.

"In reducing the manufacture of mounts, the company's subcontracts for materials should be adjusted as quickly as possible in order that the raw materials which would have been required may be made available for the manufacture of commercial products. In developing plans for the curtailment and stoppage of manufacture, it is desired that the smallest amount of partly machined and raw materials remain at the time when the manufacture of mounts finally ceases. Cancellation of materials from subcontracts should be made with this end in view. The bureau realizes that, when work under the above

contract stops, there will be, of necessity, a quantity of partly
187 finished parts in process in all stages of completion. Disposition of such material will be covered later by instructions from the bureau.

"The bureau desires that the company keep it informed of the action taken in accordance with this letter, and also that it should initiate preparations for cancellation along the lines indicated herein.

"Very truly yours,

"RALPH EARLE.

"Russell Motor Car Co.,

"93 Dewey Ave., Buffalo, N. Y."

On November 23, 1918, T. A. Kearney, acting for the Bureau of Ordnance, wrote plaintiff as follows:

"Navy Department,

"Bureau of Ordnance,

"Washington, D. C., Nov. 23, 1918.

"Subject: Contract No. 1498 for 250 3" Mark XI-2 anti-aircraft gun mounts. Cancellation of contract.

"SIRS:

"The Secretary of the Navy having authorized cancellation of the company's contract No. 1498 for 250 3" anti-aircraft gun mounts, the company is hereby directed to cease all work in connection therewith not later than December 2, 1918.

"A just and fair settlement will be made as provided by the terms of the contract and in accordance with the statute covering such cases. The details of settlement will be arranged with this bureau.

"The company is requested to submit all claims in detail at an early date. Such material as cannot be absorbed on the company's other contracts or in commercial work should be carefully inven-

toried and held for such disposition as may eventually be determined upon.

"Acknowledgment of receipt of this letter is requested.

"Very truly, yours,

"T. A. KEARNEY,
Acting.

"E. S. B.

"Russell Motor Car Co.,

"93 Dewey Ave., Buffalo, New York.

"(Via Naval Inspector of Ord., Homestead Steel Works
Munhall, Pa.)

(Indorsed: Naval inspector of ordnance, Russell Motor Car Co.
Nov. 30, 1918. Received and forwarded. C. F. Schmidt.)"

At said time on November 23, 1918, the plaintiff was ready and willing, and fully prepared to and could and would have completed and delivered the number of gun mounts and sights required of the kind and quality prescribed by contract 1498, if it had not been prevented from so doing by the United States and the Secretary of the Navy acting in its behalf.

At the time the said letter of November 23, 1918, was received the plaintiff had completed all engineering designing and drafting work and it had on hand or in course of delivery, all materials necessary to perform the contract No. 1498 in its entirety and had all necessary tools, dies, jigs, fixtures, machinery, and an adequate and efficient organization of employees, competent for the complete performance of the contract, being fully ready, able, and willing to carry out the terms of said contract on its part to be performed.

188 The engineering, designing, and drafting work above referred to was necessary as a preliminary to the performance of contract 949.

XI.

When contract 1498 was canceled no mounts had been delivered thereon, and contract 949 was not yet fully performed and was not so performed until approximately six months thereafter. At the time of said cancellation plaintiff was also handling contracts for adapters and fuse parts for the Army.

XII.

There were extended negotiations in attempted settlement of plaintiff's claim on account of the cancellation of contract 1498. The Acting Secretary of the Navy determined just compensation to be \$497,380.01 which, upon a rechecking of some items, was reduced to \$495,250.34, and offered settlement on that basis which was declined by the plaintiff. There was objection to the allowance made on some of the items embraced in the tendered settlement and particular objection to the refusal to make any allowance on account of anticipated profits and on March 6, 1920, plaintiff, by letter, in-

formed the Acting Secretary of the Navy that it had placed the matter in the hands of its attorneys with instructions to take proper steps for the collection of its claim. This suit was commenced November 20, 1920.

Thereafter, by letter dated March 17, 1921, after the commencement of this suit, the Assistant Secretary of the Navy informed the plaintiff "that after final checking and inventory of your records by the naval inspector of ordnance, the department has determined the just compensation due your company by reason of the cancellation of the contract to be \$444,847.68.

"As you have declined to accept the basis of settlement proposed by the department, you are entitled under the law to receive 75% of the just compensation as determined, which in this instance amounts to \$333,636.76. The partial payments heretofore made to you on this account aggregate \$243,820, leaving \$89,815.76 as the unpaid balance of 75%, and instructions have this day been issued to the Bureau of Ordnance to prepare public bill for this amount."

On March 30, 1921, the plaintiff acknowledged receipt of check for \$89,815.76 to make up 75% of the above award, and accepted same with the express stipulation that acceptance was without prejudice or the waiving of any rights or claims in proceedings then pending in this court.

And on April 4, 1921, the Acting Secretary of the Navy informed the plaintiff, in reply to its request, that the sum of \$444,847.68 determined upon as just compensation was made up of the following items:

Raw materials, cost plus 10%	\$146,094.61
Finished parts, relative contract value	73,224.77
Semifinished parts, relative contract value	14,160.99
Supplies at cost	24,916.06
Jigs, tools, and fixtures at cost less % of contract completion 4.44%	26,383.77
Office supplies at cost less salvage value	1,208.28
Subcontractors' claims at approved cost	77,839.04

189

Equipment, facilities, and installation at cost less proportion assigned other contracts less salvage value less % of contract completion	\$10,495.25
Machinery and equipment of cost less salvage value less % of contract completion	21,453.10
Packing and shipping charges at cost	1,427.00
Miscellaneous expenses as approved less % contract completion	2,644.81
Lump-sum cancellation allowance to cover incidentals not specifically ascertainable or allowed elsewhere . . .	45,000.00

Total amount recommended in settlement . . . 444,847.68

XIII.

Plaintiff and defendant entered into a stipulation wherein and whereby defendant admits that there is due the plaintiff from the defendant on account of several items set forth therein the sum of \$360,931.46. The plaintiff does not admit therein that this is all there is due on account of said items. The stipulation is as follows:

"It is hereby stipulated and agreed by and between the attorneys for the respective parties to the above-entitled cause that the amounts claimed for the several items set forth in the amended petition filed in said cause November 20, 1920, shall be admitted as to the items and the amounts set forth below as proven and true, and the findings of fact by the court in this case may embrace said items and amounts with due allowance for deductions on account of salvage for machine-shop steel rejections, four (4) tons at fifteen dollars (\$15.00) amounting to sixty dollars (\$60.00), and because of amortization of eight-thirteenths (8/13) to contract No. 949 between the same parties on account of installation of electric craneway a deduction of twelve hundred and fifty-seven and ninety-four hundredths' dollars (\$1,257.94), and because of amortization of eight-thirteenths (8/13) to contract No. 949 on account of electric crane, a deduction of two hundred and fifteen and thirty-eight hundredths dollars (\$1,015.38) all said allowance for deductions amounting in the aggregate to twenty-three hundred and thirty-three and thirty-two hundredths dollars (\$2,333.32):

Raw materials.....	\$132,525.11
Finished parts.....	47,873.00
Semifinished parts.....	11,154.82
Supplies, tools, jigs, and fixtures.....	52,525.77
Office supplies.....	1,208.32

Subcontractors' claims:

Atlas Crucible Steel Co.....	\$108.06
Wallace Barnes Company.....	50.04
Canada Forge Company.....	3,008.84
Canada Foundries & Forgings Co..	1,106.53
Chase Metal Works.....	1,480.21
Cleveland Knife & Forge Co.....	2,778.15
Cochrane Brass Foundry Co.....	4,182.89
Jas. Graham & Company.....	502.61
Hammond Steel Company.....	2,642.55
National Tool Company.....	54.10
Otis Steel Company.....	819.90
Peerless Drawn Steel Company.....	1,870.55
Railway Steel Spring Co.....	23,422.70
Camden Forge Company.....	3,624.31
Superior Steel Castings Co.....	32,187.60

Total subcontractors' claims.....

77,839.00

190

Rearrangement and alteration of plant	\$4,346.82	
<i>Rearrangement and alteration of plant</i>	<i>4,346.82</i>	
In-tallation of machinery.....	2,830.83	
Installation of electric craneway....	2,044.16	
Chipping shed.....	246.83	
Annealing furnace.....	383.11	
Addition to hardening department...	247.97	
Moving shed for storage of material..	378.94	
Restaurant and equipment.....	1,762.17	
		\$12,240.83
Machinery and equipment.....	78,263.50	
Less salvage value.....	54,978.25	
		23,465.25

Packing and shipping:

Raw and semifinished materials.....	1,286.56	
Tools and fixtures.....	126.51	
Freight and cartage on steel returned from Can. Edrs. & Forg. Co.....	13.93	
		1,427.00

Miscellaneous expenses:

Premium in bond.....	1,496.64	
Insurance 12/1/18 to 11/30/19....	237.95	
Traveling expense.....	304.93	
Telephone and telegrams.....	55.46	
Police and watchmen, 6/15/19- 12/31/19	910.67	
		3,005.65

Total account of expenditures.....	363,264.78
Deductions as above.....	2,333.32

Admitted as due Russell Motor Car Company on account of several items set forth above..	306,931.46
--	------------

"It is hereby further stipulated and agreed by and between the attorneys for the parties in said cause that payments under contract No. 1498 have been made by the United States and received by Russell Motor Car Company in the amount of two hundred and forty-three thousand eight hundred and twenty dollars (\$243,820.00), but that there will be offered in evidence the original progress vouchers, papers, and checks upon which payments were made to comprise this sum, reference to same being set forth more in detail in paragraph 7th of the amended petition herein."

XIV.

Just compensation to the plaintiff company for the cancellation of said contract 1498 is \$455,250.34, which amount includes determined

allowance on account of raw materials purchased for the fulfillment of said contract with an added allowance for handling and other expenses in connection therewith, finished parts in their proportionate value to all the parts entering into a gun mount, cost of assembling not included, semifinished parts on the same basis, percentage of completion considered, supplies, tools, jigs and fixtures, subcontractors' claims paid, office supplies, rentals, amortization of special machinery purchased for the performance of this contract, installation of machinery, packing and shipping, miscellaneous expenses, and an additional allowance to cover possible contingencies not included in the itemization.

Plaintiff has received and is chargeable as against said amount the sum of \$333,635.76.

191

XV.

The actual cost to the contractor of producing and delivering 25 gun mounts and sights under contract 1498, including all labor material, and overhead, and all expenses required to be borne by the contractor, including all contingent expenses which might reasonably have been incurred or which might reasonably arise out of its complete performance of contract 1498, was \$978,875.00, or a total cost each per gun mount and sight of \$3,915.50. Had the plaintiff been permitted to make and deliver the full quantity of gun mounts and sights called for by its contract 1498 at the contract price of \$7,860.00 each it could and would have earned and received a profit of \$960,416.32, or \$3,841.66 on each mount and sight, assuming the performance of the contract under existing conditions without unforeseen contingencies or deductions by way of liquidated damages or delays.

If the plaintiff is entitled to recover an account of anticipated profits in addition to the amounts included in just compensation in Finding XIV the amount it is entitled to recover on that account is \$726,120.15 reduced from the amount first stated above to that amount by reason of elements included in some of the items entering into just compensation as determined in Finding XIV.

XVI.

Just compensation as determined in Finding XIV does not include any allowance because of the fact that after the cancellation of contract 1498 the plaintiff was still required to complete contract 949 and could not, while manufacturing the mounts and sights for the completion of the contract last named, sell or dispose of its buildings, plant, or machinery or disband its organization, nor does it include profit on 25 mounts delivered in October and November on contract 949, which, but for the change in the schedule of deliveries, might have been delivered on contract 1498, nor does it include any allowance for the cost of maintaining an office at Buffalo, N. Y., during 1920 and 1921 for the closing up of its affairs.

Conclusion of Law.

On the facts found the court concludes as matter of law that the plaintiff is entitled to recover one hundred sixty-one thousand six hundred fourteen dollars and fifty-eight cents (\$161,614.58), as set out in Finding XIV, and that it is not entitled to recover as otherwise claimed, and judgment is directed for said sum of one hundred sixty-one thousand six hundred fourteen dollars and fifty-eight cents (\$161,614.58).

Opinion.

DOWNEY, Judge, delivered the opinion of the court.

The plaintiff's action is for the recovery of damages by reason of the cancellation of a contract for 250 aircraft gun mounts with sights, which was entered into between it and the United States on the 14th of May, 1918, the United States being represented in the execution of said contract by the then Acting Secretary of the Navy.

This contract took the number 1498 and will be so referred to.

192 During the progress of the war representatives of the

United States were seeking manufacturers competent to undertake the class of work involved in this and a previous contract and were recommended by the president of a concern then engaged for the United States in that line of work to the Russell Motor Car Company (Ltd.), a Canadian corporation which was then engaged in the manufacture of munitions for the British Government. It followed that the Canadian corporation took up the matter with representatives of the United States and was requested to submit a bid, which it did, and which in competition was found acceptable.

The fact that the bidder was a Canadian corporation caused some discussion, as a result of which it concluded to incorporate and acquire a plant in the United States for the purpose of the performance of the contract then in contemplation. It did incorporate in the United States under the laws of the State of Delaware, the Canadian corporation subscribing for a considerable proportion of its capital stock, and procured and equipped a plant at Buffalo, N. Y. It transferred from its Canadian plant sufficient men experienced in munitions manufacture to form the nucleus of an organization and by reason of the former experience of these men the plaintiff's organization in the United States was, no doubt, an efficient one at an earlier date than it could otherwise have been. We have found the facts with reference to this feature of the matter and mention them because we are requested to find them by the plaintiff and because upon them the plaintiff lays much stress in the presentation of its case; but we are of the opinion that they are wholly immaterial so far as the merits of the case are concerned. The contract then in contemplation was not the contract here involved but was a previous contract entered into on the 3d day of November, 1917, for the manufacture of 400 antiaircraft gun mounts and sights.

But aside from that feature of the matter it might reasonably be assumed that steps taken by the plaintiff toward the perfecting of an efficient organization were for its own benefit and that it incorporated in the United States and acquired its factory for the performance of said contract, not from any compulsion, or, so far as appears, from any patriotic motives inuring to the United States, but because it regarded it as advantageous from the standpoint of its own interest. It might be added that even though it does appear that the performance of this first contract was satisfactory so far as the character of the output was concerned the plaintiff company was not able to perform it within the time required by the contract but was the recipient of a very substantial extension of time.

Soon after the incorporation of the plaintiff company it, as suggested, entered into a contract with the United States for the manufacture of 400 antiaircraft gun mounts with sights at a contract price of \$8,462.00 each, deliveries to commence on or before May 1, 1918, and, following in stated numbers each month, to be completed on or before January 15, 1919.

The 250 gun mounts provided for by contract 1498, executed May 14, 1918, were to be of the same kind, character, and quality as those provided for in contract 949, but at the lesser price of \$7,860.00 each, the deliveries under said second contract numbered 1498 to commence on or before October 31, 1918, and to be completed by monthly deliveries on or before April 30, 1919. The first delivery, therefore, under contract numbered 949 was due on or before the day following the execution of contract numbered 1498.

It becomes important now to note in connection with scheduled deliveries and as bearing upon some questions presented and discussed by plaintiff that upon the 19th of September, 1918, the plaintiff, then being obligated under both contracts, each with its separate schedule of deliveries, requested, in writing, a modification of the schedule of deliveries, submitting a requested schedule to cover deliveries under both contracts, but with the stipulation that it should be permitted to apply all shipments of mounts on the first contract until the same was completed, and thereafter to follow with shipments upon the second contract. This schedule of deliveries found in Finding IX, contemplated the delivery of 5 mounts in June, 20 in July, and 40 in August, the three months preceding the requested change; 50 in September, the month in which the request for the change was preferred, and a completion of deliveries on both contracts in May, 1919. This amended schedule therefore delayed proposed early deliveries and extended the time for the completion of both contracts. The request of the plaintiff in this respect was granted by the Bureau of Ordnance, Navy Department, having charge of the matter, but it is to be remembered, in so far as the change affects any question for consideration herein, that it was solicited by the plaintiff and consented to by the defendant.

On November 23, 1918, the Acting Chief of the Bureau of Ordnance, Navy Department, informed the plaintiff that the Secretary of the Navy had authorized the cancellation of contract 1498 and

directed the plaintiff to cease all work in connection therewith not later than December 2, 1918. It is proper to be noted in this connection that at this time there had been no deliveries under contract 1498 and that contract 949, upon which all mounts were being delivered in accordance with plaintiff's request was not completed for several months thereafter.

The plaintiff contends that the cancellation of contract 1498 was wholly unauthorized and that it is therefore entitled to recover all damages resulting from said cancellation, in which it specifically includes a claim for the profits to be anticipated from the performance of said contract predicated upon the difference between what it alleges would have been the cost to it of the 250 gun mounts and the contract price. The defendant contends that the cancellation of the contract was authorized under the act of June 15, 1917 (40 Stat. 182), and that while the plaintiff under the provisions of said act is entitled to just compensation by reason of the exercised right of cancellation by the United States, it is not entitled to recover anticipated profits as a part thereof.

The act of June 15, 1917, was an act making appropriations to supply deficiencies in appropriations for the Military and Naval Establishments on account of war expenses. The provisions invoked by the defendant are found under the subhead "Emergency shipping fund" wherein, within the limits of the amounts authorized, the President is given certain powers with reference to placing orders for ships or material, requiring owners of plants to place their output at the disposal of the United States, requisitioning plants and ships, etc., among which is the power "(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material."

Provision follows, in case of the exercise of any of these powers by the President, for the making of just compensation to be determined by the President with a right, if the compensation fixed is unsatisfactory, to receive 75 per centum thereof and to sue under section 24, paragraph 20, and section 145 of the Judicial Code for such sum as added to said 75 per centum will make up such amount as will be just compensation, followed by a further provision that—

"The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time."

with a proviso not here material.

Following are provisions as to what shall be deemed to be included in certain words used in the act, among which it is provided that—

"The word 'material' shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof,"

and it is then provided that the authority granted to the President in the act or by him delegated shall cease six months after the final

treaty of peace is proclaimed between this Government and the German Empire.

On July 11, 1917, the President by Executive order directed that the United States Shipping Board Emergency Fleet Corporation and the Shipping Board directly, or, in its discretion, through the Fleet Corporation, should exercise certain of the powers delegated to him by said act and by a further Executive order of date August 21, 1917, he directed that the Secretary of the Navy should exercise all the powers vested in him by said act "in so far as applicable to and in furtherance of the construction of vessels for the use of the Navy and of contracts for the construction of such vessels, and the completion thereof, and all powers and authority applicable to and in furtherance of the production, purchase and requisitioning of materials for construction of vessels for the Navy and for war materials equipment, and munitions required for the use of the Navy, and the more economical and expeditious delivery thereof."

The Secretary of the Navy having directed the cancellation of the contract in question and prolonged negotiation looking to a settlement of the question of compensation having failed of their purpose and this suit having been instituted, an award was made in the sum of \$444,847.68 as "just compensation," as required by said act, and the plaintiff declining to accept said award in full of its claim, it was paid a sum which, with sums already paid, amounted to 75% of the award, all upon the theory on the part of the United States that the provisions above referred to of the act of June 15, 1917, were applicable, and in awarding "just compensation" prospective profits were excluded. The applicability of said act is disputed by the plaintiff and in its behalf it is contended that the power "to modify, suspend, cancel, or requisition any existing or future contracts for the building, production, or purchase of ships or materials" applied only to private contracts, and this contention requires at our hands a construction of the quoted provision in respect to its application, whether to private contracts alone or to Government contracts as well.

We have already had before us and passed upon the same question in *Meyer Scale & Hardware Company v. United States*, decided January 9, 1922. The conclusion of this court in that case was permitted to go unchallenged. But the fact that the same question is again raised, together with the reasonable assumption, aside from what we must know from our own docket, that it will be frequently involved by reason of war-time activities in the making, modifying, and canceling of contracts, renders the conclusion of far-reaching importance.

In the *Meyer Scales* case the question was elaborately and ably argued, much more in detail than is attempted in the instant case, and in our opinion we gave careful consideration to all phases of it, arriving at what we regarded as the only tenable conclusion and, under the circumstances, rather than content ourselves, on the one hand with a mere reference to that case, or on the other hand, attempting an independent discussion, we will restate here, with approp-

priate modification, the main features of our discussion of the question in the former case.

When language is not ambiguous extraneous aids to interpretation are neither necessary nor proper, but there are collateral matters, other acts, statements accompanying reports to Congress, debates, etc., which, because in a measure reverted to by counsel, we will refer to not because in our opinion they are a necessary resort, but because being cited in part by plaintiff we regard them in their entirety as strengthening our interpretation.

The words "modify," "suspend," "cancel" and "requisition" are each of plain, well-understood meaning and each has its proper function in the accomplishment of the purpose intended by the act. Combined, they cover the whole field of necessary operations so far as contracts were concerned, to the end that they might be so treated as should be found necessary to the accomplishment of governmental purposes. It is required that they be given their usual accepted meaning unless it satisfactorily appears that they were used in some other sense.

It was contended in the former case and may be again argued that the use of the word "requisition" is decisive of the meaning of the provision since this word could only apply to private contracts and not to contracts with the United States, but we may not properly resort to one word as determinative of the question when four are for consideration. No doubt "requisition" must find its application only to private contracts, since a conception of the Government attempting to requisition its own contract must be founded upon absurdity, but with equal assurance may it not be said that Congress never intended to do such an uncalled for and wholly unjustified thing as to authorize the "modification" of private contracts. The power and the purpose are equally beyond conception. Contracts must possess certain elements to give them life, and arbitrary modification without consent of parties would be impairment to the extent of destruction. The essential of mutual agreement to the same thing in the same sense would be destroyed and no
196 valid contract binding upon the parties would remain. A private contract might first be requisitioned and then modified to suit the purposes of the Government, but when thus modified it would, by virtue of the requisitioning, be the Government's contract.

If under some circumstances the words "suspend" or "cancel" might imply a power which the Government was authorized to exercise in respect to private contracts, it is plain that their natural application is to contracts to which the Government is a party and such application could scarcely be excluded from the scope of the legislation in the absence of any basis for the conclusion that such exclusion was intended.

The purpose and scope of the act in its entirety are for consideration and if, in the accomplishment of its purpose it is to be conceded that the powers conferred had application in part at least to private contracts, it is significant that the limitation put upon the exercise of the powers conferred extended over a period during which there

could be no possible occasion for their exercise except in connection with Government contracts.

It was provided that the authority granted should cease "six months after a final treaty of peace is proclaimed between this Government and the German Empire." Actual hostilities always cease some time before peace by treaty follows. The interim is usually covered by an armistice following the cessation of hostilities. Actual warfare having ceased under the terms of an armistice probably to be followed by a treaty of peace there could seem to be no reason for the further exercise of any of the granted powers so far as private contracts were concerned, since further subordination of private rights to the necessity of preparation for war was presumably unnecessary but the very circumstance which rendered unnecessary the exercise of any of these powers as to private contracts presented reasons for their exercise as to Government contracts. Hostilities having ceased, with every prospect that the war was over, the natural thing to do would be to first "suspend" contracts for war supplies and later, when circumstances justified it, to "cancel" contracts for unneeded supplies or, if circumstances justified, to cancel at once, and if, perchance, cancellation were not justified before the final accomplishment of peace six months thereafter were provided for the exercise of that power, and it seems impossible to conceive of any use to be made of any of the granted powers during this extended period except the power of cancellation and that necessarily as to Government contracts.

Indeed, the fact that the operation of the statute is extended to a period of six months beyond the proclamation of peace shows a recognition by Congress of the fact that the conditions we have mentioned could and possibly would arise and an intention to provide for them. Contracts, whether "existing or future," were brought within the scope of the legislation, and the power was given to modify or cancel them when there was no further need for a part of all of the things that furnished their consideration.

We are cited to the Congressional Record as sustaining plaintiff's theory that the language in question applied only to private contracts and we are particularly referred to a statement by the chairman of the Appropriations Committee on the floor of the House in which

197 he is quoted as saying that "There certainly could not be any taking over by the Government of its own contract. Such a statement would be impossible of performance." We have

already herein ventured to express the same opinion and that too without feeling that we were possessed of great erudition in doing so and we need not repeat. Nor need we go into a detailed consideration of the lengthy debates on this and kindred legislation. Much of it is but the expression of individual opinions, widely divergent, seldom indicative of careful consideration and binding, as a theory upon no one, but it seems to us that the history and purposes and scope of this class of legislation with such expressions as to its purpose as are proper for consideration, found not alone in the parts of the record cited but in the entire record, not only do not sustain plaintiff's deduction but to the contrary. They evidence a purpose

to grant every power to which there might be any possible occasion to resort and to err, if at all, by granting too largely rather than to take the responsibility of withholding any desired or possibly needed power.

While the act of June 15, 1917, is the act here under consideration and the only act relied upon, its construction and purpose is made additionally manifest by reference to the naval appropriation act of March 4, 1917, subhead "Naval Emergency Fund," 39 Stat. 1192. The process of evolution is significant. Two of the four words used in expressing powers granted with reference to contracts are found also in the latter act.

While this legislation was pending question arose as to progress being made under the then authorized ship building program and the Secretary of the Navy sent to the chairman of the House Committee on Naval Affairs a lengthy letter (Cong. Record, vol. 54, pt. 3, p. 2584), in which he reported fully on the status of the ship building program and the difficulties encountered in expediting it, and, apparently, to assist in meeting existing conditions and, as provided, to enable the securing of more economical and expeditious delivery of materials, etc., and construction of ships, power was given the President, in that bill, among other things, to "modify" or "cancel" any existing contract with power further to take possession of the factory of any contractor if he should refuse to comply with a contract as so modified, provisions which clearly, as in that act used, applied to Government contracts. The provision, however, was limited to "existing" contracts and the power granted was limited to March 1, 1918.

A comparison of the two acts renders it plainly apparent that the act of June 15, 1917, subhead "Emergency shipping fund," in so far as powers conferred upon the President is concerned, was modeled after the act of March 4, 1917. There is rearrangement with some modifications but the inclusion of the same subject matter with so much of the same phraseology could have resulted only from the use of one as a model for the other. Changes or additions therefore become significant. As passed in the Senate, the clause in the act of June 15, 1917, conferring power as to contracts contained the additional word "requisition" and it was made applicable to "future" as well as "existing" contracts. To words, therefore, plainly applicable in the naval bill to Government contracts only, and repeated in the

act of June 15, 1917, was added a word having particular application to private contracts. In conference there was rearrangement of Senate provisions and, as to the contract clause, the word "suspend" was injected, the manager on the part of the House stating during consideration of the conference report that, "It gives power to suspend contracts as well as to cancel, modify, or requisition. In the Senate provision there was no authority to suspend a contract between private parties which might interfere with the Government requisitioning or requiring work to be done." It is true that the discussion on the floor of the House as to the effect of the addition of this word was addressed largely to its application to private contracts as to which there were widely divergent views both

as to the purpose and effect of and the power to enact such legislation, but there is nothing in the whole course of the legislation, even including the debates, justifying the conclusion that all the powers granted as to contracts were deemed applicable alone to private contracts. Rather, beginning with the original provision, used as a basis for the formulation of that in question, and considering the additions with the apparent purposes intended to be accomplished thereby, would it seem to have been the purpose to broaden powers already applicable to Government contracts and to so broaden them as to permit the exercise of any necessary power in relation to contracts of the character in question, either public or private.

It is not questioned that the subject matter of contract 1198 was within the purview of the act in question, that the power of the President in relation to such a contract was duly delegated to the Secretary of the Navy and that it was exercised by his direction through the proper administrative bureau of the Navy Department. If the provision of this act with reference to the modification, cancellation, etc., of contracts, applied to Government contracts, as we believe and hold that it did, it was a provision of existing law which must be read into the contract and the contract is to be treated, in determining the rights of the parties thereunder, as if a cancellation clause was written therein.

The act in question provides for compensation in case the Government shall exercise the power conferred as to canceling, modifying, suspending or requisitioning contracts, taking over plants, etc., and the measure is just compensation. Having the right, as we conclude, to cancel the contract, what is required to measure fully up to just compensation? Our theory necessarily excludes the idea of an award of damages as for a breach of the contract and substitutes therefor an award, pursuant to the statute, in compensation to the plaintiff for the exercise of a right accruing under the law and necessarily read into the contract requiring the treating of the contract as if a cancellation clause were written therein with a counter obligation to do justice by way of compensation in the event of the exercise of that right. In this view the authorities relied upon by the plaintiff are in large measure inapplicable.

The question of just compensation is, of course, before us *de novo* and not by way of confirmation or otherwise of the award made but the case is so presented upon the record, the discussion and such evidence as there is so addressed to the items of the award as made that the finding must necessarily be largely upon that basis. And

199 since our finding as to just compensation is the finding of an ultimate fact, unassailable unless the legal theory upon which it is predicated is erroneous, it seems not worth while to enter into a detailed discussion of the items involved, indicated in a general way in the findings, a perhaps unnecessary detail. Some general observations may, however, not be inappropriate, particularly in view of the trend of the discussion in some respects.

It is to be remembered that the preliminary work on the part of the plaintiff by reason of organization, acquisition and equipping of plant, etc., was all in anticipation, so far as appears from the record.

of the performance of the first contract, number 949, for 400 gun mounts and sights and that contract 1498 was not then in contemplation; that engineering, designing, and drafting and other work preliminary to and in preparation for manufacture of mounts were necessary in preparation for the performance of contract 949; that contract 949 was fully performed and the plaintiff was paid the full contract price for the 400 mounts, including, according to plaintiff's own showing, a very high percentage of profits and a release from any liability on account of delay in performance under the liquidated damage clause of the contract; that such new machinery as was afterward installed for the purpose of the performance of the contract 1498 was reimbursed for by an item included in the departmental award and in the finding herein made as to just compensation. It is also, as bearing particularly on two points argued by the plaintiff as to which, as shown in Finding XVI, there is an exclusion in the determination of just compensation, to be remembered that the change in the scheduled deliveries and the arrangement for the application of all mounts manufactured first upon contract 949 was at the solicitation of the plaintiff.

It is apparent from the record that there were prolonged negotiations for the purpose of arranging a settlement as between the plaintiff and the department. The proffers upon the part of the department were apparently unacceptable to the plaintiff and yet it must be said from the record that there was an apparent disposition upon the part of the department to treat liberally with the plaintiff to the end that there might be an adjustment of proper claims by reason of the cancellation of the contract 1498. The negotiations, offers, and countercontentions seem to justify the assumption that since the department was declining to consider anticipated profits as proper for allowance it was disposed to deal liberally with the plaintiff in other respects. We suggest this because there were items included in the determination of the department as to just compensation which were but scantily, if at all, supported by any facts appearing in the record and because while in some instances the plaintiff contended that the allowance was insufficient it has failed by any proof beyond mere general statements to establish either the insufficiency or the proper allowance in lieu of that tendered.

The department in its first detailed determination of just compensation found the proper amount to be \$497,380.01 which, upon a rechecking, it reduced to \$495,250.34, and significant of the attempts on the part of the department to arrive at an award acceptable to the plaintiff is the fact that having theretofore arrived at a lesser amount it appears that there was remaining a controversy as to certain items and that in furtherance of an attempt to reach a satisfactory conclusion the department incorporated in its itemization going to make up the amounts above stated an additional item of something over \$27,000.00 which it determined to be one-half of the amount apparently remaining in dispute. But the department continued to refuse to include anticipated profits upon the performance of the contract although its itemized determination did include some elements of profit and the plaintiff saw fit to reject the offer and institute this suit.

After the institution of the suit it is to be noted that the department then made a formal award of just compensation, accompanied by an itemized statement, set out in Finding XII, in which it reduced the amount from that stated above to \$444,847.68. But it is proper for observation in connection with this final award which involved this much of reduction from that formerly tendered that the record fails to show the reasons for this very considerable reduction in the amount which it had theretofore concluded was properly payable to the plaintiff as just compensation. We have fixed just compensation at the amount determined upon and tendered by the department next before the commencement of this suit, and even though in some respects it seems to savor of undue liberality, it must be regarded as having been determined upon in those respects by the department in the light of detailed information which to some extent is not furnished us by the record. An illustrative point as to the basis of plaintiff's objections, aside from the question of anticipated profits, is found in its objection made to the item with reference to raw materials taken at cost, with an additional ten per cent to cover expense of inspecting, handling, storing, etc.

This ten per cent allowance the plaintiff maintains was insufficient to cover the expenses incurred in connection with the handling, inspecting, storing, etc., of the raw materials, but its contention in that respect is, in general terms, without, so far as we are able to ascertain, any attempt to inform the court as to what the proper reimbursable expenses in that connection were. But without going into details as to the items either as to the basis upon which they were fixed or as to plaintiff's objections thereto, or as to the possible omission of some item which should have been included, although we are not cited to any such, it is to be observed that there is in that allowance a general item of \$45,000.00 denominated a cancellation allowance and to cover any items not specifically included. There is nothing in the record to justify any conclusion otherwise than that this amount additional to the specific items was amply sufficient to cover any possible contingency not included therein.

There are certain items suggested by the plaintiff as proper for consideration and allowance which are not included in our finding, as to just compensation and, that the plaintiff may have the benefit of such contention as it sees fit to make with reference to those items we have specifically set out their noninclusion in Finding XVI. The plaintiff's contention as to the first of said items is that after the cancellation of contract 1498 the plaintiff was still required to complete contract 949 and while manufacturing the mounts and sights for the completion of that contract it could not dispose of its buildings, plant, or machinery or disband its organization and was damaged thereby.

201 The statement of the proposition would seem to carry its own answer. Assuredly so if the facts as found are borne in mind. The cancellation of contract 1498 had nothing whatever to do with the fact that the plaintiff was then required to continue the operation of its plant in order to complete its contract 949. The possibility might be suggested of a claim arising by reason of the cancellation of contract 1498 if that contract and the preceding con-

tract were running simultaneously so that the cancellation of one contract imposed an additional burden, as to overhead for example, upon the other contract. But the fact that the contracts were not being simultaneously performed, that contract 949 was not completed, and that notwithstanding the fact that all mounts made during this period were being delivered on contract 949 instead of apportioned to two contracts, the completion of contract 949 was yet delayed for several months, precludes the idea that any expense attendant upon the performance of contract 949 was due to or in any manner aggravated by the cancellation of contract 1498.

This and other questions presented by plaintiff are in some instances discussed as if the change in the original schedule of deliveries, separate as to each contract, and the application of all amounts upon contract 949 until its completion was a burden imposed upon the plaintiff by the United States, whereas the fact is as found and heretofore suggested that that change was solicited by the plaintiff and if it was in any manner disadvantageous—which, however, does not appear—the burden can not, therefore, under any circumstances be shifted to the defendant.

The next contention, as to which some things already said appertain, is as to the profits upon 25 mounts, 10 in October and 15 in November, delivered on contract 949 which, but for the change in the scheduled deliveries, might have been delivered on contract 1498 and which it is contended that the plaintiff is entitled to recover under contract 1498. The basis of such a contention is beyond our comprehension. It is proven that if the change in scheduled deliveries had not been made and permission had not been granted to apply all mounts on contract 949 until completed that these 10 mounts in October and 15 in November would have been delivered on contract 1498.

But in addition to the suggestion as to the responsibility of the plaintiff for the change in scheduled deliveries it is for consideration that all mounts manufactured during those months were delivered to the United States and that the plaintiff received upon said 25 mounts delivered under contract 949 a price in excess of that which it would have received had they been delivered upon contract 1498. The theory may possibly be that it would have had the benefit of these deliveries on contract 1498 and still have been permitted to complete contract 949, thus accomplishing an additional delivery of 25 mounts but facts already stated answer the contention. The third contention, excluded as shown in said Finding XVI, is based upon the cost of maintaining an office at Buffalo, N. Y., during 1920 and 1921 for the closing of its affairs. The claim is so apparently without foundation as an element of compensation growing out of the cancellation of contract 1498 that we do not deem it necessary to discuss it.

202 The amount determined upon and found fully measures the plaintiff's rights as to just compensation under our interpretation of those rights, but because of the plaintiff's claim therefor and request we have made a finding as to its profits to be anticipated from the performance of the contract measured by the difference between cost of production and contract price.

In this finding (XV) we have found the profits to be anticipated upon the basis of its own request supported by its own evidence which, while not without its inconsistencies and questionable accuracy, is the best available for the purpose. It shows the very hand some profit inhering in the contract and necessarily reflects but more than substantially the plaintiff must have profited under contract 949, for, while cost of manufacture may have been and probably was greater in the earlier stages of that contract, the contract price was higher by \$602.00 per mount or \$240,800.00 on 400 mounts, and since the claimed very large profit to be anticipated at the lesser price under 1498 is based upon cost of production in the latter stages of the performance of contract 949, there would seem to be no occasion for apprehension that the plaintiff's venture into the field of war-time production in the United States shall have been unprofitable if, to the liberal finding awarded it herein, we shall be unable, because of our view of the law and the rights of the United States thereunder, to award it a further need of profit for which it has performed no service in the earning.

Reverting to the finding on the subject, made as stated, it is to be observed that the amounts as stated are on the basis of a performance of the contract by the plaintiff for which it would be entitled to receive the contract price, the transaction in that event involving the assuming by the plaintiff of all the burdens of performance in return for its profits not otherwise augmented. But perchance the plaintiff should be entitled to recover on account of profits in addition to the amount found by us as just compensation; it is apparent that the amount must be reduced by reason of the inclusion in that compensation as found of some elements of profit, some burdens to be otherwise assumed by the plaintiff in the performance of the contract, and contingent allowances not otherwise proper for inclusion, and on this basis is finally found the amount properly to be awarded if the plaintiff should be so entitled.

In that connection it is further to be noted that plaintiff in its petition claims on account of the difference between alleged cost of production and contract price, referred to commonly as anticipated profits, the sum of \$951,232.50 and for other items set up in the following paragraph of its petition the sum of \$367,225.30. Since we conclude that there can be no recovery on account of anticipated profits it might be said, technically, that excluding that item there could be no recovery under the averments of the petition in excess of \$367,225.30, but since in the petition there is a general averment of a total damage of \$1,321,457.80 we have given it such liberal construction as is necessary to justify a judgment under this general averment for the amount of our finding as to just compensation.

Somewhat bearing upon this situation it is to be noted that in plaintiff's requested conclusion of law following its requested findings, it proceeds upon the theory of a total claim as stated above, made up of the sum of \$195,250.34, which we have found to be just compensation, and the items which we have rejected (Finding XVI) and anticipated profits. Assuming, therefore, that such rejections, heretofore referred to in detail, are just

fied and that plaintiff is not entitled to anticipated profits our finding as to just compensation fully meets its own requested conclusion from the facts.

If there were doubt in our minds as to the correctness of our conclusions on the question of claimed profits, it would be necessary to consider some other features as to the basis of recovery and to call attention particularly to the fact that the finding as to anticipated profits is based, as requested, upon the difference between the assumed cost of production and the contract price without any allowance necessarily to be made because of the contingencies and uncertainties of performance as well as results. And since it appears in this case that plaintiff did not perform its contract 949 within the contract period, and was the recipient of a liberal extension of time, and was already, before performance of contract 1498 had begun, soliciting an extension of time as to it, the possible reduction of profits by reason of the application of the liquidated damage clause of the contract would, with the many other contingencies, be for consideration.

If we are right in our conclusion earlier stated as to the proper construction of the act of June 15, 1917, and if, therefore, the law read into the contract gave the Government a right to cancel the contract, requiring only just compensation, the compensation required must necessarily have reference to conditions resulting from the exercise of a right and not involving a breach. Having awarded the plaintiff full compensation for all damages accruing up to the time and by reason of the cancellation of the contract is it required that there shall be added thereto the profit anticipated from the performance of the contract upon the same basis as if the cancellation were not a matter of right?

Considering the existent situation if the right to cancel, as expressed in the statute, had been actually written into the contract, and it was for construction, it is doubtful if such a contention would ever be seriously made. If it should be said that the contract gave the contractor the right to perform the entire contract with resultant profit the answer would be that the contract, necessarily with the consent of the contractor, gave the Government the right to terminate it at any desired stage during its performance, as a result of which any further rights thereunder, with resultant advantage to the contractor by way of profits, ceased. At that point, as by a distinct line of demarcation, the future is separated from the past and adjustment of rights on the basis of just compensation to the contractor has its proper field of operation behind and not beyond that line.

The particular act under discussion does not attempt to define the scope of "just compensation" but in one important act we find an expression of the legislative mind as to the basis of compensation under circumstances some of which are analogous to those with which we are dealing. The Dent Act (40 Stat. 1272) contemplates adjustment of contracts not formally executed, and it is provided—

"That in no case shall any award, either by the Secretary of War or the Court of Claims, include prospective or possible profits on any part of the contract beyond the goods and supplies

delivered to and accepted by the United States and a reasonable remuneration for expenditures and obligations or liabilities incurred in performing or preparing to perform said contract order."

This is, of course, not a Dent Act case, and we are not unmindful of the differences in the status of parties with or without properly executed contracts, but the purpose of that act was to relieve those complying or having prepared to comply with Government orders from informal contracts from the disabilities growing out of the fact that they were not then in possession of formally executed contracts and it authorized adjustment with them on a designated basis which Congress seemed "fair and equitable."

It is noted that plaintiff requests reconsideration of our conclusion in the Meyer Scale case and a following in this case of the holding in College Point Boat Corporation, theretofore decided. Counsel was probably not aware of the fact that the conclusions and judgment in the last-named case had been set aside and that the rule of the Meyer Scale case, restated here, is the rule of this court.

Our conclusion, we are confident, awards the plaintiff just compensation upon a basis embodying such elements of liberality as to preclude any possibility of inadequacy.

Hay, Judge; Graham, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

205

VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Twenty-sixth day of June, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of One hundred and sixty-one thousand six hundred and fourteen dollars and fifty-eight cents (\$161,614.58).

By THE COURT

VII. *Plaintiff's Application for and Allowance of Appeal.*

Comes now Russell Motor Car Company, plaintiff in the above titled cause, by its attorneys, and prays an appeal to the Supreme Court of the United States from the judgment of this court, rendered on the 26th day of June, 1922.

KENEFICK, COOKS, MITCHELL &
BASS,

By LYMAN M. BASS,

Attorneys for Plaintiff.

Filed July 11, 1922.

Ordered: That the above appeal be allowed.

EDWARD K. CAMPBELL,

Chief Justice.

July 12, 1922.

206

Court of Claims.

No. 34698.

RUSSELL MOTOR CAR COMPANY

VS.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the Court by Downey, J.; of the judgment of the Court; of the plaintiff's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Thirteenth day of July, A. D., 1922.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 29,035. Court of Claims. Term No. 485. Russell Motor Car Company, appellant, vs. The United States. Filed July 15th, 1922. File No. 29,035.

(6953)

FILED

FEB 7 1923

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.

No. 485.

RUSSELL MOTOR CAR COMPANY,

Appellant,

vs.

UNITED STATES,

Respondent.

APPEAL FROM COURT OF CLAIMS.

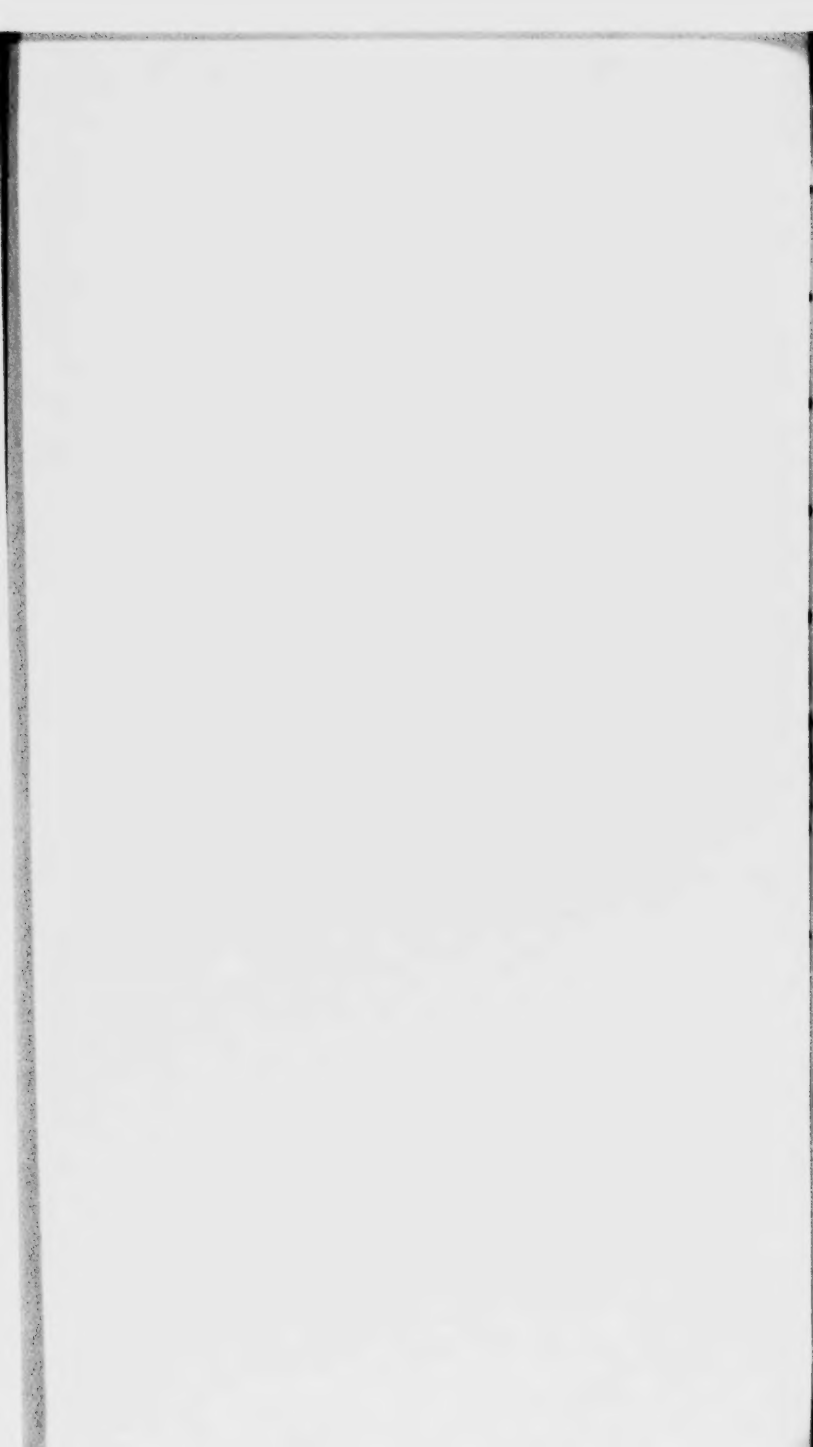
BRIEF FOR APPELLANT.

LYMAN M. BASS,

Attorney for Appellant,

1330 Marine Trust Building,

Buffalo, N. Y.



INDEX.

	Page
Statement of Case.....	1
Specification of Errors:.....	5
Statement of Facts.....	8
Point I.—The claimant is entitled to be awarded its full damages based upon the difference between the contract price and the cost of full performance to it, making due allowances for all contingent and other expenses that might reasonably arise out of such full performance.....	23
Point II.—The Act of Congress of June 15, 1917, (40 Stat. 182) does not apply to this case and should not be construed to regulate or affect claimant's rights to deprive it of its damages and profits due to the failure of the United States to carry out its contract	35
A. The act related to the work of the Shipping Board, etc.	40
B. The act of June 15, 1917, relates only to private contracts, etc.....	47
C. The language of the Act of June 15, 1917, shows that the power of the government to cancel contracts was limited, etc.	56
D. A gun mount and sight is "ARMAMENT" and falls within the definition "War Material," etc.....	58

E. A reading and construing together of the provisions of the three acts that might be applicable to war contracts, etc.	62
F. The construction for which the government contends that the Act of July 15, 1917, authorizes the president to cancel future contracts, etc.	76
G. The parties to the contract never intended, believed or agreed that the Act of June 15, 1917, should apply to the contract herein.....	83
Point III.—Assuming but not admitting, that the Government is right in its position that the cancellation of the contract involved is governed by the provisions of the Act of June 15, 1917, etc.....	88
Point IV.—The judgment of the Court of Claims should be reversed and the case remanded to the court with directions to amend its judgment so as to avoid and decree that the plaintiff-claimant is entitled to recover from the United States the sum of \$887,834.73, together with such other relief and judgment as may be just.	114
Appendix	115

III.

TABLE OF CASES CITED.

	Page
Adams Express Co. v. Ohio State Auditor, 166 U. S. 185.....	103, 105
Anderson v. United States, 51 C. C. 228.....	33
Binns v. U. S., 194 U. S., 486, p. 495.....	46
Bugajewitz v. Adams, United States Immi- gration Inspector, 228 U. S. 585.....	75
Cedar Rapids Gas Light Case, 233 U. S. 655.	105
Cincinnati v. L. & N. R. R. Co., 223 U. S. 390	54, 56
Cleveland Railway Co. v. Backus, 154 U. S. 439, 445	101
Cobb v. U. S., 7 C. C. 470.....	32
Cohen v. U. S. 15 C. C. 253.....	32
Cotting vs. Kansas City Stockyards, 183 U. S. 79	102
Cudahy Packing Co. vs. Minnesota, 246 U. S. 450	105
Des Moines Gas Case, 238 U. S. 153.....	105
Denver Union Water Co. Case, 246 U. S. 178.	105
Duplex Co. v. Deering, 254 U. S., 443, at pp. 474-5	46
Ellicott Machine Co. v. United States, 43 C. C. 469	33
Frost v. Wenne, 157 U. S. 46.....	81
Floyd v. U. S., 2 C. C. 429.....	32
Galveston Electric Co. vs. City of Galveston, Sup. Ct. U. S., decided Apr. 10, 1922....	105
Greenleaf v. Goodrich, 101 U. S. 278.....	73
Guerini Stone Co. v. Carlin, 240 U. S., 264..	33
Guerini Stone Co. v. Carlin, 248 U. S. 334..	33
Harvey v. U. S., 8 C. C. 501.....	32
Hinckley v. Pittsburgh Steel Company, 121 U. S. 264	29, 33

IV.

	Page
Houston Construction Co. v. U. S., 38 C. C.	
724	33
Kellogg Bridge Co. v. U. S., 15 C. C. 206....	32
Long Island Water Supply Co. v. Brooklyn,	
166 U. S., 685.....	54
Louisville & Nashville Railroad Co. v. Mott-	
ley, 219 U. S. 467.....	74
Market Co. vs. Hoffman, 101 U. S., 112, p. 115	83
Masterson v. Mayor of Brooklyn, 7 Hill 61..	30
Milmot v. Mudge, 103 U. S. 217.....	80
Minnesota Rate Cases, 230 U. S. 352.....	105
Montclair vs. Ramsdell, 107 U. S. 147.....	108
Monongahela Navigation Co. vs. U. S., 148 U	
S. 312	72, 98
Moore v. U. S., 1 C. C. 90.....	32
Moore v. U. S. 17 C. C. 17.....	32
Myerle v. United States, 31 C. C. 105.....	32
Omaha vs. Omaha Water Co., 218 U. S. 180..	105
Peck v. Jenness, 7 How. 612.....	77
Railroad Commission of Wisconsin v. C. B.	
& Q. R. R. Co.....	46
Reagan vs. Farmers Loan & Trust Co., 154	
U. S. 362, 410, 412.....	103
Rhoem v. Horst, 178 U. S., 1.....	29, 33
Smyth vs. Ames, 169 U. S., 466.....	73, 104
The Lake Monroe, 250 U. S. 246, at pp. 251,	
252, 253, 254, 255.....	47
United States v. Purcell Envelope Company,	
249 U. S. 313	29
U. S. v. Speed, 8 Wall, 77, 85.....	29, 33
United States v. Behan, 110 U. S., 338.....	29, 33
U. S. 264	29, 33

V.

	Page
United States v. Spearin, 248 U. S. 132.....	32
U. S. v. St. Paul, etc., R. R. Co., 247 U. S. 310	
at p. 318	46
U. S. v. Pfitsch, 256 U. S. 547 at p. 551.....	46
United States v. Salen, 235 U. S. 237.....	50, 73
United States v. Berans, 3 Wheaton, 336....	51
United States v. Nichols, 186 U. S. 298, p. 300	50
United States v. Corliss Steam Engine Co.,	
91 U. S. 321.....	66, 85
United States v. Bashaw, 50 Fed. 749.....	75
United States v. Field, 255 U. S., 257.....	76
United States vs. Baltimore & O. S. W. R. Co.	
159 Fed. 33	78
U. S. v. Healey, 160 U. S. 136.....	82
United States v. Lee Yen Tal, 185 U. S., 213.	82
United States v. Rogers, 255 U. S. 163, p. 169	98
Wilder v. U. S., 5 C. C. 468.....	32
Wilmington Railroad vs. Reid, 13 Wallace	
264	105



IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.

No. 485.

RUSSELL MOTOR CAR COMPANY,	}
<i>Appellant.</i>	
vs.	
UNITED STATES,	
<i>Respondent.</i>	

APPEAL FROM COURT OF CLAIMS.

BRIEF FOR APPELLANT.

Statement of Case.

This proceeding was started in the Court of Claims by the filing of a petition on September 14, 1920. The amended petition, under which the evidence was taken, and under which the case was tried and decided, was filed in the Court of Claims on November 20, 1920. The case was argued before and submitted to the Court of Claim on May 24, 1922. On June 26, 1922, the Findings of Fact and Conclusions of Law of the Court of Claims were entered, whereby judgment was directed in

favor of claimant-appellant and against the United States for a balance due claimant in the sum of \$161,614.58.

We will refer to the plaintiff-appellant as claimant in this brief.

The claimant's petition sets forth an action to recover \$1,321,457.80 less \$243,820.00 paid on account, leaving \$1,077,637.80 as a balance due from the United States for goods sold, work done and damages, growing out of the refusal of the United States to carry out a written contract, dated May 14, 1918, which had been entered into in its behalf by the then acting Secretary of the Navy for the manufacture of 250 anti-aircraft gun mounts and sights by the claimant herein at a price of \$7,860.00 each (pp. 1-8).

By letter dated November 23, 1918, T. A. Kearney, Acting Chief of the Bureau of Ordnance, Navy Department, advised the claimant that the Secretary of the Navy having authorized cancellation of the company's contract, the claimant was thereby directed to cease all work in connection with said contract not later than December 2, 1918 (p. 125).

The Navy Department, as purported just compensation for its cancellation of the contract above mentioned, awarded and offered the claimant company the sum of \$495,250.34 (p. 126). The claim-

ant rejected this offer and the above action was instituted in the Court of Claims. Prior to the institution of the action, payments aggregating \$243,820.00 had been made to claimant by the United States (being 80% of the work done under progress invoices) (pp. 5, 6, 129). Thereafter, during the pendency of this action in the Court of Claims, the Navy Department attempted to amend or reduce its former award for just compensation as fixed above at \$495,250.34 to the sum of \$444,847.68 (p. 127). Upon the basis of this last stated sum the United States paid the claimant, and the claimant received without prejudice or waiving any rights (p. 127), the additional sum of \$89,815.76, which, with the \$243,820.00 already paid, constituted 75% of the said reduced sum of \$444,847.68 fixed by the Navy Department after the institution of this proceeding, as the award to which claimant was entitled (p. 127). The Court of Claims, however, found that the claimant was entitled to receive as just compensation \$495,250.34, the same amount fixed as just compensation by the Secretary of the Navy prior to the institution of the suit, and entered judgment in claimant's favor for \$161,614.58, the unpaid balance of the amount so determined by the Court of Claims. (\$495,250.34 less \$333,635.76 paid, equals \$161,614.58). (p. 131).

The claimant applied for leave to appeal to this Court from the judgment so rendered. The appeal was allowed by the Court of Claims on July 12, 1922 (p. 145).

The written contract upon which this action is based, contains no clause authorizing its cancellation on the part of either party. (pp. 13-20, 120).

The Court of Claims found that the claimant was ready, able and willing to carry out the contract and manufacture the 250 gun mounts and sights at the time the Navy Department directed the claimant to cease its performance and purported to cancel the contract. The Court of Claims in its award for damages only allowed the claimant recovery for materials furnished and work and labor done up to the date on which the defendant refused to proceed with the contract. Indicating its position on this matter, the Court of Claims, among other things, stated in its opinion:

" * * * Having awarded the plaintiff full compensation for all damages accruing up to the time and by reason of the cancellation of the contract is it required that there shall be added thereto the profit anticipated from the performance of the contract upon the same basis as if the cancellation were not a matter of right? * * * At that point, as by a distinct line of demarcation, the future is separated from the past and adjustment of rights on the basis of just compensation to the contractor has its proper field of operation behind and not beyond that line."

The Findings of Fact, Conclusion of Law, and opinion of the Court of Claims, excluded from the sum awarded to the claimant as balance due, any

amount or sum by way of damage, compensation or profit that accrued or might accrue to it by virtue of the work that it was entitled to perform under the contract after the date of the notice from the Navy Department of November 23, 1918, directing the cessation of further work under said contract (pp. 130, 131; Findings of Fact XV and XVI, and Conclusion of Law).

Indeed there was also excluded any allowance for 25 gun mounts and sights that claimant had made and could have delivered on the date of cancellation under circumstances later discussed herein (pp. 126, 130, 141).

Specification of Errors.

1. The Court of Claims erred as a matter of law in not including in the judgment various undisputed legal elements of damages and compensation to which claimant was and is entitled, including the fixed, certain and non-speculative profit which it would have made according to the Court's Findings of Fact, based upon the difference between the contract price and the full cost of performance thereof to the claimant (pp. 130, 131).

2. The Court of Claims erred in holding as a matter of law, that the Act of Congress of June 15, 1917, (40 Stat. 182) regulated, applied to or authorized the cancellation of claimant's contract (pp. 130, 131, 133, *et seq.*).

3. The Court of Claims erred in finding as a matter of law and fact, that the sum of \$495,250.34 was just compensation to the claimant for the cancellation of its contract, in that it also specifically found as a matter of fact that this said sum did not include the sum of \$726,120.15, and in refusing to find as a matter of law that claimant was entitled to said last mentioned sum or any part thereof as damages as a matter of law, being the profits which the Court of Claims found as a fact claimant would have made if it had been allowed to complete contract, based upon the difference between the contract price and its full performance of the same (pp. 130, 131).

4. The Court of Claims erred in failing to find that the just compensation, whether as stated in the Act of June 15, 1917, or otherwise, did not and does not legally entitle the claimant to have included in the judgment its legal damages, to wit, an amount for its profits, based upon the difference in the contract price and the cost of the full performance thereof by claimant, being [as found as a fact by the Court of Claims] in addition to the sum of \$495,250.34, the further sum of \$726,120.15 (pp. 130, 131).

5. The Court of Claims erred in finding its judgment in favor of the claimant in only the sum of \$161,614.58, which said last mentioned sum concededly did not include or make any allowance for any damages or profits after the United States

refused to proceed further under the contract and directed the claimant to cease all work thereunder. (pp. 130, 131).

6. The Court of Claims erred in not increasing its said judgment of the sum of \$161,614.58 by adding thereto and including therein the further sum of \$726,120.15, or any part thereof (p. 131).

7. Without waiving the errors above specified, the Court of Claims erred, in any event, in not increasing its judgment and including therein the damages and just compensation, to wit, the profit on 25 gun mounts and sights, being the sum of \$96,041.50, which said 25 gun mounts and sights claimant was ready, willing and able to deliver in October and November, 1918, and prior to the purported cancellation of claimant's contract in communication of Navy Department, dated November 23, 1918 (pp. 124, 130, 131, 141).

8. Without waiving the errors above specified, the Court of Claims erred in not including in its judgment the \$161,614.58, the further sum of \$96,041.50, being found as a fact as the profit on 25 gun mounts which claimant was ready, able and willing to deliver in October and November, 1918, and prior to the purported cancellation of its contract by communication from the Navy Department, dated November 23, 1918 (pp. 124, 130, 131, 141).

9. The Court of Claims erred as a matter of law on the facts found, in adjudging that the claimant was only entitled to the sum of \$161,614.58, and not including therein the damages that the claimant, who was ready, able and willing to carry out the contract in its entirety, sustained by reason of the acts of the Navy Department in purporting to cancel its contract and refusing to carry out the same, thereby depriving the claimant of its damages recognized by law based upon the difference between the contract price and the cost of full performance of the same by the claimant, which, concededly, in this case, as found by the Court of claims, would entitle the claimant to have the said judgment of the Court of Claims increased by the sum of \$726,120.15, lawful damages and compensation to which it is legally entitled (p. 131).

10. The Court of Claims erred in its judgment in the rule of damages adopted upon the undisputed findings of fact and thereby deprived claimant of its property without due process of law, and also without just compensation in violation of the fifth amendment to the Constitution of the United States.

Statement of Facts.

In the early part of the war and during 1915, 1916, and 1917, the Russell Motor Car Company, Ltd., a Canadian corporation, not the claimant

herein, became extensively engaged in the manufacture of munitions for the British Government. It employed about 6,000 men and was officered by and employed, in responsible positions, men of ability and skill, and had built up a highly efficient organization (p. 120).

Officers of the United States seeking for suitable persons to undertake the manufacture of further gun mounts, conferred with the president of a concern then engaged in that line of work for the Government, and he recommended the Canadian company referred to, and it was invited to submit a bid, which it did in competition. Its bid was acceptable, but the fact that it was a Canadian corporation led to some discussion, resulting in the conclusion by the bidder to incorporate a company in the United States and erect a plant for this work. The claimant company was thereupon and in or about the month of October, 1917, incorporated under the laws of the State of Delaware with a capital stock of \$2,500,000, all of which was paid in, and a large part of which was subscribed by the Canadian corporation (p. 121). In the month of November, 1917, the claimant entered into a contract, dated November 3, 1917, with the United States, represented by F. D. Roosevelt, Acting Secretary of the Navy, whereby it undertook to make and deliver 400 3" anti-aircraft gun mounts complete with sights, except telescopes, at a price of \$8,462.00 each, the contract having de-

partment number 949, together with the specifications attached thereto. This is not the contract involved in this case. This contract 949 was amended by the Government to provide for 200 mounts with sights, and 140 mounts without sights, all of which were duly made and delivered by the plaintiff. The contract requirements were complied with, and the gun mounts and sights were accepted by the United States and paid for in full without any deduction for delay or otherwise (pp. 120, 124).

The claimant corporation in the fall of 1917, after the making of this contract 949, acquired and purchased a large plant in the City of Buffalo, N. Y., and immediately provided the nucleus of the organization, manufacturing, purchasing, executive, accounting and cost keeping, made up of men who had been trained in the manufacture of munitions, and who, for the most part, had carried on the munition manufacturing program for the said above described Russell Motor Car Company, Ltd., of Canada. The time from November, 1917, to March, 1918, was occupied in the work of installing machinery, equipping the plant, and designing and manufacturing jigs, tools and fixtures which were necessary for the accurate production of the gun mounts and sights involved. About March, 1918, actual work on the material for these gun mounts and sights, required under the first contract above mentioned, was begun, the Navy maintaining inspectors in the plant and

keeping in constant touch with the progress of the work and the quality and accuracy of the workmanship under both contracts (p. 121).

In the month of May, 1918, the claimant entered into a written contract (this is the contract upon which this suit is based), dated May 14, 1918, with the United States, represented by F. D. Roosevelt, Acting Secretary of the Navy, whereby it undertook to make and deliver 250 3" anti-aircraft gun mounts complete with sights, (except telescopes), at the agreed price of \$7,860.00 each. Delivery of the mounts was required under the contract within the following stipulated periods:

15 mounts on or before October 31, 1918, and additional mounts as follows:

15 before November 30, 1918,

20 before December 31, 1918,

25 before January 31, 1919,

60 before February 28, 1919,

60 before March 31, 1919,

60 before April 30, 1919.

(p. 119. The contract in full is Exhibit A, annexed to complaint. p. 120, pp. 12-31.)

Contract 949, the first contract entered into in November, 1917, for 400 anti-aircraft gun mounts and sights, covered the manufacture of gun mounts of the same kind, character and quality as those provided for in contract 1498, the one involved in this appeal, the only difference in the terms and specifications of the two contracts being those relating to the price of the gun mounts and sights to be delivered thereunder, as well as

the quantity of gun mounts and sights to be manufactured and delivered and the delivery dates thereof (p. 120). The time for delivery of the gun mounts under contract 949 was as follows:

25 before June 15, 1918,
 40 before July 15, 1918,
 50 before August 15, 1918,
 50 before September 15, 1918,
 50 before October 15, 1918,
 50 before November 15, 1918,
 60 before December 15, 1918,
 60 before January 15, 1919. [p. 120].

By mutual arrangement between the claimant and the defendant, and based upon no fault of claimant, the time and schedule for the deliveries of the gun mounts under the two contracts were amended and changed. This was brought about by the following correspondence:

"Sept. 19, 1918.

Navy Dept., Bureau of Ordnance,

Washington, D. C.

Attention Commander Richmuth.

Re Contract 949 for 400 3" Anti-aircraft Gun Mounts, and Contract 1498 for 250 3" Anti-aircraft Gun Mounts.

Dear Sir:

We propose to make deliveries of gun mounts as follows:

1918	Shipped	1919	Shipped
June	5	January	75
July	20	February	75
August	40	March	75
September	50	April	75
October	60	May	40
November	60		
December	75		650

2. We would respectfully ask your permission to allow us to apply all shipments on mounts on the first contract until same is completed, and then follow with shipments on the second contract. This will greatly simplify the handling of all records and manufacturing of parts in the factory. You will note from deliveries given in the first paragraph that in the month of February the first fifteen months would complete contract 949 and the balance of 60 mounts to be delivered in February and the deliveries in the months of March, April, and May would complete the second contract #1498 of 250 mounts.

3. Extension of contract. We have been seriously delayed in supplying gun mounts in accordance with deliveries outlined in our contracts due to conditions beyond our control, and believe that in connection with contract #949 specifying 400 3" anti-aircraft gun mounts that we are entitled to an extension of 90 days.

In regard to our second contract #1498 for 250 3" anti-aircraft gun mounts, we believe we are entitled to some extension due to difficulties in securing material, but at this time are not prepared to give any idea as to the amount of extension that should be allowed.

We are in the meantime proceeding to do everything possible to hurry this work along, and at the proper time will be pleased to discuss with you the matter of extension.

Will you kindly let us have the desired information as soon as possible?

Yours very truly,

RUSSELL MOTOR CAR CO., INC.,

C. R. Burt, General Manager."

On October 11, 1918, the claimant wrote Admiral Ralph Earle, Chief of the Bureau of Ordnance of the Navy Department as follows:

“October 11, 1918.

Admiral Ralph Earle,

Navy Dept., Bureau of Ord.,

Washington, D. C.

Re Contr. 949-400 3" A. A. Mounts; Contr.
1498-250 A. A. Mounts.

Dear Sir:

Your letter of September 25th received and note that you grant our request relative to shipping all of the gun mounts and the 1st contract 949 until the order is completed and follow with shipments applying on the second contract.

We thank you for granting us this concession, which is entirely satisfactory.

Very truly yours,

RUSSELL MOTOR CAR CO., (INC.)

C. R. BURT,

Gen. Mgr."

On September 25, 1918, the Navy Department Bureau of Ordnance, by Admiral Ralph Earle, Chief of said Bureau of Ordnance, wrote the plaintiff as follows:

"Navy Department,

Bureau of Ordnance,

Washington, D. C., Sept. 25, 1918.

33901 373 (M2-5) O.

E.A.

Subject: Contr. 949 for 400 3" A. A. Mounts
and Contr. 1498 for 250 3" A. A. Mounts.

Reference: (a) Company's letter of Sept. 19,
1918.

Sirs:

Receipt is acknowledged of the company's letter of Sept. 19, containing in the first paragraph proposed schedule of deliveries of mounts on the above contracts.

The company's request for permission to

apply all shipments of mounts on the first contract, No. 949, until same is completed, is approved.

With reference to the company's remark concerning extension of time on contract No. 949; in order that proper consideration may be made to such claims at the expiration of the contract, it is suggested that your company forward the bureau promptly written notification of specific instances where delays beyond your control have occurred in accordance with the stipulation mentioned in the contract.

Very truly yours,

RALPH EARLE.

Russell Motor Car Co.

Via: Naval Inspec. of Ordnance, Homestead
Steel Works,

Munhall, Pa."

(pp. 122, 123, 124.)

The plaintiff company manufactured and was able to deliver to the United States in the month of October, 1918, ten gun mounts under contract 1498 and manufactured and was able to deliver under said contract fifteen gun mounts in the month of November, 1918, and would have made such deliveries on said contract but for the consent of the United States to changed deliveries as set out in the above correspondence and to application of said ten and fifteen gun mounts on contract 949. Relying upon the consent of the United States to said amended schedule of deliveries said ten and fifteen gun mounts so manufactured in October and November, respectively, with all other mounts manufactured during those months, were delivered to the United States to apply on said contract 949. [p. 124].

As appears from the above correspondence (p. 124), the plaintiff claimed that it was entitled to an extension of time under these contracts due to conditions beyond its control; also that the change would be for the material benefit of both parties in their accounting under the two contracts. This was in part the asserting of a right, and when the United States consented to the amending of the schedule of deliveries, the terms of the contracts were naturally changed so far as the dates for deliveries and amounts thereof are concerned. It would seem immaterial as affecting any question of damages or a waiver of any right to damages on the part of the claimant as to which one of the parties wrote the first letter, or made the suggestion that the contracts be changed. We mention this as the Court of Claims seems to lay some emphasis upon this fact (p. 141). Until the amending of the deliveries under the contracts as above, they ran concurrently for the months of November, December, 1918, and January, 1919.

Contract 949 for the 400 mounts was fully performed by the claimant, the Government making payment in full and no deductions being made by reason of any delays (p. 124).

After contract 1498 (the one in suit) was made, the claimant secured additional premises, machinery, tools, ordered extra material and proceeded doing shop work, as well as making contracts for material with sub-contractors for castings, forg-

ings and steel parts to carry out the contract (p. 121).

A gun mount and sight is an intricate piece of ordnance weighing approximately six thousand pounds and requires the handling of large pieces of material, and at the same time involves the greatest precision, particularly in the elevation of the gun. The variation of a thousandth of an inch in the measured distance of the piece will throw out the result of the gun fire, owing to the length of travel of the projectile. Operators of great mechanical skill were required (p. 121).

The claimant after installing and equipping its plant between November of 1917, and March of 1918, started the actual work on the material for the gun mounts and sights under the first contract, the Navy maintaining inspectors in the plant and keeping in constant touch with the progress of the work and the quality and accuracy of the workmanship. (p. 121).

On November 23, 1918, the plaintiff was ready, able, and willing, and fully prepared to and could and would have completed and delivered the number of gun mounts and sights required of the kind and quality prescribed by contract 1498, if it had not been prevented from so doing by the United States and the Secretary of the Navy acting in its behalf. (p. 126).

At the time the said letter of November 23, 1918, was received, the plaintiff had completed all engineering, designing and drafting work, and it had on hand or in course of delivery, all materials necessary to perform the contract 1498 in its entirety and had all necessary tools, dies, jigs, fixtures, machinery, and an adequate and efficient organization of employees, competent for the complete performance of the contract, being fully ready, able, and willing to carry out the terms of said contract on its part to be performed. The engineering, designing, and drafting work above referred to was necessary as a preliminary to the performance of contract 949. (p. 126).

We take the liberty of quoting the following findings of the Court of Claims in full, for it is mainly upon the facts therein stated that the questions of law in this appeal arise:

“XIV.

Just compensation to the plaintiff company for the cancellation of said contract 1498 is \$495,250.34, which amount includes determined allowance on account of raw materials purchased for the fulfillment of said contract with an added allowance for handling and other expenses in connection therewith, finished parts in their proportionate value to all the parts entering into a gun mount, cost of assembling not included, semi-finished parts on the same basis, percentage of completion considered, supplies, tools, jigs and fixtures, subcontractors' claims paid, office supplies, rentals, amortization of special machinery purchased for the performance of

this contract, installation of machinery, packing and shipping, miscellaneous expenses, and an additional allowance to cover possible contingencies not included in the itemization.

Plaintiff has received and is chargeable as against said amount the sum of \$333,635.76."

"XV.

The actual cost to the contractor of producing and delivering 250 gun mounts and sights under contract 1498, including all labor, material, and overhead, and all expenses required to be borne by the contractor, including all contingent expenses which might reasonably have been incurred or which might reasonably arise out of its complete performance of contract 1498, was \$978,875.00, or a total cost each per gun mount and sight of \$3,915.50. Had the plaintiff been permitted to make and deliver the full quantity of gun mounts and sights called for by its contract 1498 at the contract price of \$7,860.00 each it could and would have earned and received a profit of \$60,416.32, or \$3,841.66 on each mount and sight, assuming the performance of the contract under existing conditions without unforeseen contingencies or reductions by way of liquidated damages to delays.

If the plaintiff is entitled to recover an account of anticipated profits in addition to the amounts included in just compensation in Finding XIV the amount it is entitled to recover on that account is \$726,120.15 reduced from the amount first stated above to that amount by reason of elements included in some of the items entering into just compensation as determined in Finding XIV."

"XVI.

"Just compensation as determined in Finding XIV does not include any allowance

because of the fact that after the cancellation of contract 1498 the plaintiff was still required to complete contract 949 and could not, while manufacturing the mounts and sights for the completion of the contract last named, sell or dispose of its buildings, plant, or machinery or disband its organization, nor does it include profit on 25 mounts delivered in October and November on contract 949, which, but for the change in the schedule of deliveries, might have been delivered on contract 1498, nor does it include any allowance for the cost of maintaining an office at Buffalo, N. Y., during 1920 and 1921 for the closing up of its affairs."

"CONCLUSION OF LAW.

"On the facts found the court concludes as matter of law that the plaintiff is entitled to recover one hundred sixty-one thousand six hundred fourteen dollars and fifty-eight cents (\$161,614.58), as set out in Finding XIV, and that it is not entitled to recover as otherwise claimed, and judgment is directed for said sum of one hundred sixty-one thousand six hundred fourteen dollars and fifty-eight cents (\$161,614.58) (pp. 129, 130, 131)."

From the above quoted Findings of Fact, and the Conclusion of Law based thereon, it is undisputable that if the plaintiff had been permitted to carry out contract 1498, that the difference between the contract price and the cost of its performance, making allowance for all contingent expenses which might reasonably have been incurred or which might reasonably arise out of the complete performance of the contract, was \$466,416.32. The Court of Claims found that some of

this sum was allowed by it and by the Government in finding "just compensation" to which plaintiff is entitled to be the sum of \$495,250.34.

This Court should not receive the impression that although the Navy Department offered it an apparently large sum of money as alleged "just compensation" that it, in substance, represented anything else than its outlay and moneys which it had expended up to November 23, 1918, when the Secretary of the Navy directed claimant to cease work. The claimant had expended or incurred obligations to substantially that amount for raw material, manufacture of finished parts and semi-finished parts, supplies at cost, tools, jigs and fixtures, sub-contractors' claims, installing machinery, rentals, property, etc., providing a large and efficient organization with purchasing, executive, accounting and cost-keeping departments, made up of men who had been trained in the manufacture of munitions (pp. 121, 126, 127, 128, 129, 130). This figure of \$495,250.34 made no allowance to claimant for any "just compensation" or damages that properly accrued to it by virtue of the circumstances after the date of the Navy's direction to claimant to cease work.

The Court, however, specifically finds, as quoted above, that if the claimant was entitled to recover profits in addition to the just compensation awarded the company in the sum of \$495,250.34, it would be entitled to recover the sum of \$726,-

120.15. The larger sum of \$960,416.32 is reduced by the sum of \$234,296.16 on the ground that this amount is included in the sum of \$495,250.34— the "just compensation" found by the court (pp. 129, 130), leaving the further amount due on this item of \$726,120.15.

This last stated sum the Court of Claims held as matter of law was not due claimant. [pp. 130, 131].

In other words, it appears without dispute from the Findings of the Court of Claims, that if the plaintiff was entitled to have its damages figured in this case in accordance with the well recognized principles of this court, (supporting authorities cited *infra*), and based on the difference between the contract price and the cost of performance of the contract, then the decision of the Court of Claims should be reversed and it should be directed to increase the amount of judgment which is awarded to the claimant, by the additional sum of \$726,120.15.

The Court of Claims and Government take the position that the Act of June 15, 1917, (discussed later), permits the cancellation of the contract and relieves the United States from all damages to claimant after such cancellation.

LAW.**POINT I.**

The claimant is entitled to be awarded its full damages based upon the difference between the contract price and the cost of full performance to it, making due allowances for all contingent and other expenses that might reasonably arise out of such full performance.

The questions of law are clearly raised and properly before this court.

The Court of Claims erred in refusing to award damages and to fix the just compensation to which the claimant-appellant is entitled, in accordance with the well-settled principle that such damages should be measured by the difference between the contract price and the fair cost to the claimant-appellant of its performance of its obligations under the contract. (pp. 129, 130, Findings XIV, XV, XVI, Conclusion of Law, Opinion, pp. 142-3).

As appears from the Finding of Fact XV (p. 130) of the Court of Claims, the claimant would have earned and received a profit of \$960,416.32, based upon the full performance of the contract. The claimant was "fully ready, able and willing to carry out the terms of said contract on its part to be performed" (p. 126). The Court of Claims

finds that some part of the \$960,416.32 is included in its award of just compensation in the sum of \$495,250.34, but specifically finds that \$726,126.15 is not included in such sum, and to which said amount plaintiff would be entitled to recover in addition to the \$161,614.58 allowed in its judgment. No allowance or damages are awarded claimant for profits it concededly would have made after the date the Navy Department directed the cessation of work under contract (pp. 130, 131, 142, 143).

These damages are neither speculative, indefinite or uncertain but have been clearly established and conclusively found as correct and actual by the findings of the Court of Claims. [p. 130].

If the claimant is entitled to recover any damages or profits after the date when the Navy Department refused to continue the contract, or to put it in other language, if the claimant is entitled to have its damage figured on the difference between the contract price and the cost of performing of the contract as of November 23, 1918, when the Navy Department directed the claimant to cease its work, then the judgment of the Court of Claims should be reversed, and it should be directed to increase the judgment heretofore rendered by it by the sum of \$726,126.15.

There is no ambiguity regarding the written contract in this case. The contract and the specifications annexed thereto were prepared by the Government officials. It contained no clause permitting any cancellation thereof. Certainly neither of the parties were contemplating that the Act of June 15, 1917, had any relation thereto. The court will notice that paragraph "Fifteenth" of the contract provides that it is awarded "conformably to restrictive provisions in the Naval Appropriation Act of March 4, 1917, upon the express understanding that the party of the first part is not a party to any existing combination or conspiracy to monopolize any interstate or foreign commerce (pp. 19, 20)." This is the only statute that the parties can fairly be held to have had in contemplation as affecting the contract.

The contract is apparently and by its terms made in conformity with the Act of March 4, 1917, (40 Stat. 182), which Act is entitled, "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes." Among its provisions are the following:

"BUREAU OF ORDNANCE.

"ORDNANCE AND ORDNANCE STORES: For procuring, producing, preserving, and handling ordnance material; for the armament of ships for fuel, material, and labor to be used in the general work of the Ordnance Department; for furniture at naval

magazines, torpedo stations, and proving grounds; for maintenance of the proving ground and power factory and for target practice; for the maintenance, repair, or operation of horse-drawn passenger-carrying vehicles, and one motor-propelled passenger-carrying vehicle, to be used only for official purposes at naval magazines, the naval proving ground, Indianhead, Maryland, and naval torpedo stations, and for pay of chemists, clerical, drafting, inspection, and messenger service in navy yards, naval stations, and naval magazines: Provided, That the sum to be paid out of this appropriation under the direction of the Secretary of the Navy for chemists, clerical, drafting, inspection, watchmen, and messenger service in navy yards, naval stations, and naval magazines for the fiscal year ending June thirtieth, nineteen hundred and eighteen, shall not exceed \$750,000; in all, \$8,488,333.00."

"INCREASE OF THE NAVY.

"INCREASE OF THE NAVY, ARMOR AND ARMAMENT: Toward the armor and armament for vessels heretofore authorized and the additional vessels herein appropriated for, to be available until expended, \$44,180,000."

"NAVAL EMERGENCY FUND.

"To enable the President to secure the more economical and expeditious delivery of materials, equipment, and munitions and secure the more expeditious construction of ships authorized and for the purchase or construction of such additional torpedo boat destroyers, submarine chasers and such other naval small craft; including aircraft, guns and ammunition for all of said vessels and aircraft and for each and every purpose connected therewith, as the President may di-

rect, to be expended at the direction and in the discretion of the President, \$115,000,000, or so much thereof as may be necessary, and to be immediately available."

The above act does not relate to the Shipping Board but is a grant of powers to the Navy Department, a fighting arm of our government, enabling it to secure, arm vessels and buy "war material."

The provisions of this Act of March 4, 1917, giving the President additional powers within the limits of the amounts appropriated therefor, [discussed more fully later] to place orders for ships or war material and making compliance therewith obligatory on the party to whom such order was given, and authorizing "within the limits of the amounts appropriated therefor to modify or cancel any existing contract for building production or purchase of ships or war material, etc.," are distinct from the provisions authorizing the Navy Department and the President to enter into a contract involving the consent of both parties, as is the case in regard to the contract upon which this action was based. Provisions giving the President mandatory powers in regard to the placing of orders, cancelling contracts and appropriation of factories, was the grant to him of powers of eminent domain. These powers specifically do not apply to the contract in this case because they were only applicable to "any existing contract," and the

contract in this action was not made until May 14, 1918.

The above provisions, eminent domain in character, were contained in paragraph (b) of the Act of March 4, 1917, under the title, "Naval Emergency Fund"; the last provision in said paragraph (b) providing: "That all authority granted to the President in this paragraph to be exercised in time of national emergency, shall cease on March 1, 1918." Indeed, paragraph "Fifteenth" of the contract, incorporating various of the provisions of this Act of April 4, 1917, indicates that it was the intent of the government officials that this contract was made by and governed by its terms.

As the act only gave the Government power to cancel or modify existing contracts (irrespective of the unsettled dispute of whether this power relates to Government as well as private contracts between third parties), claimant was fairly entitled to assume that as there were no provisions in the contract itself authorizing its cancellation, the contract was permanent in nature and the Government was obliged to take the materials called for therein, so long as the plaintiff was able, ready and willing to manufacture and deliver the same.

It is respectfully submitted that claimant's right to recover this additional sum of \$726,120.15 is sustained in the following cases:

United States v. Purcell Envelope Company, 249 U. S. 313. The court in delivering its unanimous opinion, at page 320, stated:

"The Court of Claims decided that the measure of damages was the difference between the cost to the envelope company of materials and the manufacture and delivery of the envelopes and wrappers in accordance with the terms of its contract, and what it would have made if it had been allowed to perform the contract. For this the court cited and relied upon *Rhodes v. Horst*, 178 U. S., 1. It is there decided that the positive refusal to perform a contract is a breach of it, though the time for performance has not arrived, and that the liability for the breach at once occurs. And it is further decided that the measure of damages is the difference between the contract price and the cost of performance. The case was replete in its review of prior cases. We may, however, refer to *United States v. Speed*, 8 Wall, 77, 85; *United States v. Behan*, 110 U. S., 338; *Hinckley v. Pittsburgh Steel Company*, 121 U. S. 264."

In *United States v. Behan*, 110 U. S., 338, a contract was made with the Engineer of the Army to make certain improvements in the harbor of New Orleans. The Court of Claims found that the plaintiff had made extensive preparation and a large initial expenditure for carrying on the work, and that he engaged actively in carrying on the contract and incurred large expenditure for labor and materials and had proceeded for some time in the undertaking when the work was stop-

ped, without fault on the part of Behan. The court said:

"Unless there is some artificial rule of law which has taken the place of natural justice in relation to the measure of damages, it would seem to be quite clear that the claimant ought at least to be made whole for his losses and expenditures. So far as appears, they were incurred and in the fair endeavor to perform the contract which he assumed. If they were foolishly or unreasonably incurred, the Government should have proven this fact. It will not be presumed. The court finds that his expenditures were reasonable. The claimant might also have recovered the profits of the contract if he had proven that any direct, as distinguished from speculative, profits would have been realized. But this he failed to do; and the court below very properly restricted its award of damages to his actual expenditures and losses.

The *prima facie* measure of damages for the breach of a contract is the amount of the loss which the injured party has sustained thereby. If the breach consists in preventing the performance of the contract, without the fault of the other party who is willing to perform it, the loss of the latter will consist of two distinct items or grounds of damage, namely: First, what he has already expended towards performance (less the value of materials on hand); secondly, the profits that he would realize by performing the whole contract. The second item profits, cannot always be recovered. They may be too remote and speculative in their character, and therefore incapable of that clear and direct proof which the law requires. But when, in the language of Chief Justice Nelson, in the case of *Masterson v. Mayor of Brooklyn*, 7 Hill 61

they are 'the direct and immediate fruits of the contract,' they are free from this objection; they are then 'part and parcel of the contract itself, entering into and constituting a portion of its very elements; something stipulated for, the right to the enjoyment of which is just as clear and plain as to the fulfillment of any other stipulation.' Still, in order to furnish a ground of recovery in damages, they must be proved. If not proved, or if they are of such a remote and speculative character that they cannot be legally proved, the party is confined to his loss of actual outlay and expense. This loss, however, he is clearly entitled to recover in all cases, unless the other party, who has voluntarily stopped the performance of the contract, can show the contrary.

"The rule as stated in *Speed's case* is only one aspect of the general rule. It is the rule as applicable to a particular case. As before stated, the primary measure of damages is the amount of the party's loss; and this loss, as we have seen, may consist of two heads or classes of damage—actual outlay and anticipated profits. But failure to prove profits will not prevent the party from recovering his losses for actual outlay and expenditure. If he goes also for profits, then the rule applies as laid down in *Speed's case*, and his *profits* will be measured by 'the difference between the cost of doing the work and what he was to receive for it,' etc. The claimant was not bound to go for profits, even though he counted for them in his petition. He might stop upon a showing of losses. The two heads of damage are distinct, though closely related. When profits are sought a recovery for outlay is included and something more. That something more is the profits. If the

outlay equals or exceeds the amount to be received, of course there can be no profits."

To the same effect see *United States v. Spearin*, 248 U. S. 132.

In the case at bar claimant proved its non-speculative certain damages and the Court of Claims by its findings of fact established the claimant's right as a matter of law within the principles above enunciated to be awarded \$726,120.15 in addition to the sum of \$161,614.58 contained in the judgment herein appealed from.

The rule has been well recognized for many years.

Moore v. U. S., 1 C. C. 90.

Wilder v. U. S., 5 C. C. 468.

Floyd v. U. S., 2 C. C. 429.

Harvey v. U. S., 8 C. C. 501.

Cobb v. U. S., 7 C. C. 470.

Kellogg Bridge Co. v. U. S., 15 C. C. 206.

Cohen v. U. S., 15 C. C. 253.

Moore v. U. S., 17 C. C. 17.

In *Myerle v. United States*, 31 C. C. 105, the court said in its opinion:

"The rule has not been uniform or very clearly settled as to the right of the party to claim a loss of profits as a part of the damages for breach of a special contract, but we think there is a distinction by which all gains of this sort can be easily decided. If the profits are such as would have accrued and

grown out of the contract itself, as the direct and immediate result of its fulfillment, then they would form a just and proper item of damage to be recovered against the delinquent party upon a breach of the agreement. These are part and parcel of the contract itself and must have been in the contemplation of the parties when the agreement was entered into, but if they are such as would have been realized by the party from other independent and collateral undertaking, although entered into in consequence and on faith of the principal contract, then they are too uncertain and remote to be taken into consideration as a part of the damage occasioned by the breach of the contract in suit."

Houston Construction Company v. U. S.,

38 C. C. 724.

Ellicott Machine Company v. United States, 43 C. C. 469.

Anderson v. United States, 51 C. C. 228.

Roehm v. Horst, 178 U. S. 1, p. 21.

Hickley v. Pittsburgh Steel Company, 121 U. S. 264, p. 276.

United States v. Behan, 110 U. S. 338.

Speed v. United States, 8 Wall. 77.

Guerini Stone Company v. Carlin, 240 U. S. 264.

Guerini Stone Company v. Carlin, 248 U. S. 334.

Claimants only seek in this action the damages which this court has held to be "part and parcel of the contract itself."

We do not understand that the Government contends that the claimant is not entitled to have its

damages and compensation based upon the rule set forth in the cases cited above, to wit, the difference between the contract price and the cost of full performance to the claimant, unless this court shall find that the Act of June 15, 1915, (40 Stat. 182) shall be construed as a part of claimant's contract and that its rights are regulated and measured thereby, in accordance with the interpretation given to that Act in the opinion of the Court of Claims.

In other words, judgment of the Court of Claims should be reversed unless this court adopts the defense of the government, which is based principally, if not solely, on its contention that the claimant should be deprived of its lawful, constitutional and common law damages, recognized and sustained by this court, because of the provisions of the act of June 15, 1917 (40 Stat. 182).

We submit, and shall discuss the proposition at length later, that neither this statute or any other, can legally deprive the claimant of its right to have its just compensation or damages, arising from the failure of the United States to carry out its contract, measured by the difference between the contract price and the cost of the full performance thereof.

POINT II.

The Act of Congress of June 15, 1917, (40 Stat. 182) does not apply to this case and should not be construed to regulate or affect claimant's rights or deprive it of its damages and profits due to the failure of the United States to carry out its contract.

We will first quote various of the provisions of this law. This act is entitled, "An act making appropriations to supply urgent deficiencies in appropriations for the military and naval establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[This court will notice claimant's contract was not entered into prior to June 30th, 1917, nor could a contract not in existence have anything to do with an existing deficiency.]

"The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production or purchase of ships or *material*.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: PROVIDED, that all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof.

The word 'material' shall include stores, supplies and equipment for ships and every-

thing required for or in connection with the production thereof.

The word 'plant' shall include any factory, workshop, warehouse, engine works, buildings used for manufacture, assembling, construction, or any process; any shipyard or dockyard and discharging terminal or other facilities connected therewith.

The words 'United States' shall include all lands and waters subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

The cost of purchasing, requisitioning, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction and the expediting of construction of ships thus under construction shall not exceed the sum of \$250,000,000, exclusive of the cost of ships turned over to the army and navy, the expenditure of which is hereby authorized, and in executing the authority granted by this act for such purpose the President shall not expend or obligate the United States to expend more than the said sum; and there is hereby appropriated for said purpose, \$150,000,000; Provided, that this appropriation shall be reimbursed from available funds under the War and Navy Departments for vessels turned over for the exclusive use of those departments or either of them.

The cost of construction of ships authorized herein shall not exceed the sum of \$500,000,000, the expenditure of which is hereby authorized, and in executing the authority granted herein for such purpose the President shall not expend or obligate the United

States to expend more than said sum; and there is hereby appropriated for said purpose, \$250,000,000.

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the army or navy, and for every expenditure incident thereto, \$5,000,000."

Claimant's contract was the result of mutual agreement with the Secretary of the Navy and had no birth in or relation to the mandatory powers given the President and quoted above. The part of the Act of June 15, 1917, relating to the "Emergency Shipping Fund" is but a small part of the whole appropriation bill, containing, in pamphlet form, some 41 pages. The Act deals with the Council of National Defense, The Emergency Shipping Fund, Bureau of Efficiency, Civil Service Commission, Treasury Department, War Department, State War and Navy Department Buildings, and also contains separate provisions granting specific powers and appropriations to the Navy Department distinctly collected in a part of the Act much later than those relating to the Emergency Shipping Fund quoted above. In these provisions the Navy Department and the Secretary of the Navy were authorized to do many things in the various departments. The following provision, now quoted, is entirely adequate to cover the contract for the gun mounts and sights with the claimant as being "armament of ships;":

“BUREAU OF ORDNANCE.

ORDNANCE AND ORDNANCE STORES: For procuring, producing, preserving, and handling ordnance material; for the armament of ships; for fuel, material, and labor to be used in the general work of the Ordnance Department; for necessary improvements at the naval proving ground naval torpedo stations, naval gun factory, and naval ammunition depots; and for pay of chemists, clerical, drafting, inspection, watchmen, and messenger service in navy yards, naval stations, and naval ammunition depots: Provided, That the sum to be paid out of this appropriation under the direction of the Secretary of the Navy for Chemists, clerical, drafting, inspection, watchmen, and messenger service in navy yards, naval stations, and naval ammunition depots, shall not exceed \$725,000; Provided further, That not exceeding \$81,500 of this amount may be expended for the services of clerks, draftsmen, and such other technical assistants as the Secretary of the Navy may deem necessary in the Bureau of Ordnance; in all. \$16,905,366.

“For procuring, producing, preserving, and handling ammunition for vessels, \$68,664,858; Provided, That no part of any money appropriated by this Act shall be expended for the purchase of powder other than small-arms powder at a price in excess of 53 cents a pound: Provided further, That in expenditures of this appropriation, or any part thereof, for powder, no powder shall at any time be purchased unless the powder factory at Indianhead, Maryland, shall be operated on a basis of not less than its full maximum capacity.

“For new batteries for ships of the Navy, \$22,333,000.

"For batteries for auxiliaries and merchantmen, \$29,672,000.

"For ammunition for auxiliaries and merchantmen \$19,988,800.

"For purchase and manufacture of torpedoes and appliances, \$11,242,000."

We submit that the provisions of the above quoted act have no application to this case, and did not authorize the cancellation of the contract under the circumstances involved, for the following reasons:

A. The act related to the work of the Shipping Board and there has never been any delegation by the President to the Navy Department carrying authority to cancel claimant's contract.

Among the latter provisions of the act quoted above, will be observed that, the cost of "purchasing, requisitioning or otherwise acquiring * * * material, charters or ships * * * shall not exceed the sum of \$250,000,000 EXCLUSIVE OF THE COST OF SHIPS TURNED OVER TO THE ARMY AND NAVY, THE EXPENDITURE OF WHICH IS HEREBY AUTHORIZED * * *."

In the case at bar claimant had no dealings whatsoever with the Shipping Board, and so, clearly, these provisions are inapplicable. To be applicable the phrase above quoted should have read, "acquisition by" if the act contemplated action by the Secretary of War or Navy. Apparently this was the view taken by the President. Claimant's contract was with Navy Department.

The cancellation was by Navy Department. The Shipping Board was not acting in any way.

Claimant's contract clearly is not made under this act. It is unjust and unfair to now seek to deprive it by virtue of this un contemplated unrelated act of its lawful damages, "part and parcel of the contract itself."

As noted in the act, the powers conferred therein were to be exercised by the President acting "through such agency or agencies as he shall determine from time to time." On July 11, 1917, the President issued the following executive order:

"By virtue of authority vested in me in the section entitled, 'Emergency Shipping Fund' of an act of Congress entitled 'An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, insofar as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction."

And I do further direct that the United

States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, insofar as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation or through any other corporation organized by it for such purpose."

This order will be found in Part 5, p. 4976, of the hearings before the Select Committee on United States Shipping Board Operations, 66th Cong., 2d Sess.; in H. R. Rep. 1339, 66th Cong., 3d Sess., p. 27; Official Bulletin, July 13, 1917; and elsewhere.

The cancellation of the contract in this case was not under the above authority.

By executive order dated August 21, 1917, the President delegated his powers under the above quoted Act of June 15, 1917, and also the Act of March 4, 1917, to the Secretary of the Navy, as follows:

**"EXERCISE OF AUTHORITY UNDER
THE 'NAVAL EMERGENCY FUND
ACT' AND OTHERS.**

"By virtue of authority vested in me in the section entitled 'Naval Emergency Fund' of

an act of Congress entitled 'An Act Making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes,' approved March 4, 1917, and in the section entitled 'Emergency Shipping Fund' of an act of Congress entitled 'An Act Making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes,' approved June 15, 1917, I hereby direct that the Secretary of the Navy shall have and exercise all power and authority vested in me in said sections of said acts, in-so far as applicable to and in furtherance of the construction of vessels for the use of the Navy and of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for construction of vessels for the Navy and of war materials, equipment, and munitions required for the use of the Navy, and the more economical and expeditious delivery thereof.

The powers herein delegated to the Secretary of the Navy may, in his discretion, be exercised directly by him, or through any other officer or officers who, acting under his direction, have authority to make contracts on behalf of the Government.

WOODROW WILSON."

(The above order will be found at page 176 in book entitled "Emergency Legislation to December, 1917, with analogous Legislation," and is also referred to in the opinion of Court of Claims in this case, p. 134.)

A careful examination of the above orders will disclose that the one of June 11, 1917, was a delegation of the power of any rights of the President under the Act of June 15, 1917, to the United States Shipping Board, there being no delegation by the President of any of his powers to the Navy Department.

There was no statement or reference in the letter of the Navy Department of Nov. 23, 1918, whereby claimant was directed to cease work, that the Secretary of the Navy was acting under or pursuant to authority delegated to him by the President by the above order. This idea originated when the Department of Justice took up the defense to claimant's demands for its lawful damages.

Annexed hereto and marked "Exhibit A" are extracts from the Congressional Record of the 56th Congress, 1st Session, Vol. 55, p. 3, indicating that there was no thought in the mind of any of the Legislators but that the Act of June 15, 1917, related solely to the Shipping Board.

Although some confusion may exist in the authorities, we submit that the debates of Congress and the statements of the chairman in charge of the bill are properly for the consideration of this court in view of the ambiguities in the act under consideration.

- Binns v. U. S.*, 194 U. S., 486, p. 495.
U. S. v. St. Paul, etc., R. R. Co., 247 U. S.
 310, at p. 318.
Duplex Co. v. Deering, 254 U. S. 443, at
 pp. 474-5.
U. S. v. Pfitsch, 256 U. S. 547, at p. 551.
Railroad Commission of Wisconsin v. C.
B. & Q. R. R. Co.
 Advance Opinions United States Su-
 preme Court, dated February 27, 1922,
 p. 236, at p. 243.

Under the order of August 21, 1917, the President delegated and authorized the Secretary of the Navy to exercise any of his powers under either of the Acts of March 4, 1917, or June 15, 1917, insofar as applicable *to the furtherance of* the construction of vessels for the use of the Navy and the completion thereof and for the requisitioning of materials for the construction of vessels for the Navy and war materials, equipment, ammunitions required for the use of the Navy and the more economical and expeditious delivery thereof. We submit that it is perfectly clear that there was no delegation of any of the powers of the President by virtue of this order to the Secretary of the Navy to cancel existing contracts in order to stop the further construction of vessels. It is perfectly well known that in August, 1917, the United States was taking every step necessary to buy ships, armament and ammunitions to carry on war. It was not a time when the President, the

Navy Department or any other department was considering or thinking of the cancelling of existing contracts in order to cut down expenses after the war was over, or after an armistice had been declared. The cancellation of the contract was not in the furtherance of, but was in derogation of the "production, purchase, or requisitioning of materials." We submit that it is clear that the power delegated by the President to the Secretary of the Navy, under the Act of June 15, 1917, to requisition plants or their output, and to commandeer any ships irrespective of whether the party being dealt with consented or not, are only grants of powers to the Secretary of the Navy looking towards the carrying on of the war and in no way related to the cancellation of contracts when war activities ceased.

The Lake Monroe, 250 U. S. 246, at pp. 251, 252-253-254-255.

B. The Act of June 15, 1917, relates only to private contracts and not to contracts to which the United States is a party.

We submit the reading of the above act in its entirety, sustains the fair inference that the intention of Congress was not to give the President the power to "modify, suspend, cancel or requisition any existing or future contract" to which the United States was a party. The use of the word "requisition" clearly indicates that the act was only intended to apply to private contracts or contracts between third parties and not contracts to which the United States is a party. The de-

bates and reports of Congress, (annexed hereto and marked "Exhibit A"), show that its purpose in enacting this commandeering regulation was in order to enable the country to work its ship yards to capacity on private contracts to face the menace of German submarines which were destroying ships of commerce on the sea and made vital and necessary the manufacture of ocean-going freighters to carry our supplies and men abroad. In regard to its own contracts the Navy Department and the United States were at liberty to incorporate therein any provisions that were desired in reference to giving the Navy Department the right to cancel or modify or suspend the contracts, or to provide for compensation or the damages to be paid in the event of the Government cancelling the same. We submit that Congress never intended that act of June 15, 1917, would be invoked to justify a cancellation by the United States of its own contract, otherwise than in accordance with the provisions contained in the contract or except with the customary liability attaching to such cancellation. There was no intent on the part of Congress to deprive a person or corporation who had voluntarily contracted with the Government, of his right to have his damages determined in accordance with well settled rules when he was ready, able and willing to carry out his contract, and through no fault of his own the United States directed him to cease further work and cancelled the contract so far as it is concerned.

The following language is quoted from in the opinion of the Court of Claims in this case:

"It was contended in the former case and may be again argued that the use of the word 'requisition' is decisive of the meaning of the provision since this word could only apply to private contracts and not to contracts with the United States, but we may not properly resort to one word as determinative of the question when four are for consideration. No doubt 'requisition' must find its application only to private contracts, since a conception of the Government attempting to requisition its own contract must be founded upon absurdity." (p. 135).

We do not understand that the Government contends or ever contended that the word "requisition," which is the last of the four words used, was ever intended by Congress to apply to or could ever be fairly construed to apply to ~~private~~ *its own* contracts.

We submit that the first three words, "modify, suspend and cancel," should not be interpreted as applying to a different kind, character or class of contracts than the word "requisition."

All four words under any proper rule of construction must relate to, operate upon and regulate the same class of contracts.

Under the well settled rule of "*ejusdem generis*," a general clause or designation in an act

following the enumeration of certain specific objects covered by the act is limited to those particular objects, and the act will not be given a construction to make it applicable to objects that might fall within a broader classification. By virtue of this recognized rule of construction, the act will be limited to the "class" designated and interpreted by and falling within the scope of the specific objects enumerated.

We will cite a few of the many cases sustaining this recognized rule of construction.

In *United States v. Salen*, 235 U. S. 237, Mr. Justice Lamar, in delivering the unanimous opinion of the Court said, at p. 247, in laying down rules which should be adopted in the construction of a statute:

"It would ignore the fact that the meaning of words is affected by their context and violate the settled rule that words which standing alone might have a wide and comprehensive import, will when joined with those defining specific acts, be interpreted in their narrower sense and understood to refer to things of the same nature as those described in the associated list, enumeration or class. Cf. *Virginia v. Tennessee*, 148 U. S. 503, 519; *United States v. Chase*, 135 U. S. 255, 258; *Neal v. Clark*, 95 U. S. 704, 708."

Among other cases adopting the same rules are
United States v. Nichols, 186 U. S. 298,
p. 300.

United States v. Bevens, 3 Wheaton,
336; opinion by Marshal, C. J., p. 236.

The opinion of the Court of Claims in discussing this provision, makes the statement,—

“ * * * but with equal assurance may it not be said that Congress never intended to do such an uncalled for and wholly unjustified thing as to authorize the ‘modification’ of private contracts. The power and the purpose are equally beyond conception. Contracts must possess certain elements to give them life, and arbitrary modification without consent of parties would be impairment to the extent of destruction.”

The Court apparently overlooks the fact that the President was being given powers of eminent domain, which, in fact, did authorize him to modify and cancel private contracts.

It would certainly be as unjustified and wholly beyond conception to cancel as to modify a private contract unless compensation was provided for in the act.

Such an act would have been clearly unconstitutional unless it carried with it provisions for “just compensation” to the parties whose contracts were thus modified or cancelled. The Act of June 15, 1917, carried such provisions. For example, supposing there was an existing private contract under which a corporation was building a

hundred ships for another contracting party or another company was manufacturing a thousand units of any kind that entered into the building of ships, the President clearly under the provisions of this contract could have modified the same by order, so that the contracting party would have been permitted to finish the manufacture and delivery of 50 ships or 500 of the articles covered by the contract and still required such party to deliver the other 50 ships or 500 units to the Government. Under these circumstances, we submit that the only rule which the courts would recognize as determining the just compensation to which the injured party was entitled under the circumstances would be the profit that he would have lost by reason of such modification of his contract by the President's order, and this would necessarily have been determined by ascertaining the difference between the contract price and the cost of performance of that part of the contract which the party was prevented from performing by reason of the modification of his contract by the President's order. If it is an uncalled for and wholly unjustified thing to modify or cancel a private contract without just compensation, is it not even more uncalled for, or more unjustified for the Government to modify or cancel its own contract without just compensation?

The reasoning in the opinion of the Court of Claims evidently proceeds upon the proposition

that a contract is not subject to eminent domain, and for that reason the whole argument falls. If the sovereign in any case may appropriate a contract to its own use then necessarily it may appropriate something less than the contract. Coupling that clause of the statute with the other powers conferred upon the President, we find that if manufacturer has contracts with private parties for materials which the President deems necessary for the prosecution of the war, the Government, may requisition the output and place itself in the position of the vendee. It may cancel the contract and require the owner of the factory to fulfill an executive order. It may suspend the execution of a private contract in order that an executive order may be filled, or it may modify a private contract in a case where the Government does not require all of the output, either by postponing performance with the vendee or by compelling him to take partial performance and share the balance with the Government. If the Government had the power to cancel such a private contract entirely, it surely could do something less than that, and that was what the statute intended to permit. The mistake which we submit occurs in the Court's opinion, however, is the surprised way in which it says that Congress never intended to do such an uncalled for and wholly unjustified thing and that the power and purpose are beyond conception. The very heart of the act is the creating arbitrary powers and providing for "just com-

pensation." Furthermore, the Court states that contracts must present elements to give them life, and modification without the consent of parties would be impairment to the extent of destruction.

Certainly the Court of Claims in its judgment took the life out of the rule of damages to which claimant was entitled by the decisions of this court. It applies an unrelated unanticipated statute to deprive it of its contractual rights.

Private contracts are capable of being condemned under power of eminent domain.

Long Island Water Supply Co. v. Brooklyn, 166 U. S., 685,

Cincinnati v. L. & N. R. R. Co., 223 U. S., 390.

In the Long Island case (*supra*) the Court says:

"No State, it is declared, shall pass a law impairing the obligation of contracts; yet with this concession constantly yielded, it cannot be justly disputed, that in every political sovereign community there inheres necessarily the right and the duty of guarding its own existence, and of protecting and promoting the interests and welfare of the community at large. This power and this duty are to be exerted not only in the highest acts of sovereignty, and in the external relations of governments; they reach and comprehend likewise the interior polity and relations of social life, which should be regulated with reference to the advantage of the whole society. This power, denominated the eminent domain

of the State, is, as its name imports, paramount to all private rights vested under the government, and these last are, by necessary implication, held in subordination to this power, and must yield in every instance to its proper exercise * * * Now it is undeniable, that the investment of property in the citizen by the government, whether made for a pecuniary consideration or founded on conditions of civil or political duty, is a contract between the State, or the government acting as its agent, and the grantee; and both the parties thereto are bound in good faith to fulfil it. But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are super-induced by the pre-existing and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in sub-ordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur. Such a condition is the right of eminent domain. This right does not operate to impair the contract affected by it, but recognizes its obligation in the fullest extent, claiming only the fulfillment of an essential and inseparable condition. * * * A distinction has been attempted, in argument, between the power of a government to appropriate for public uses property which is corporeal, or may be said to be in being, and the like power in the government

to resume or extinguish a franchise. The distinction, thus attempted, we regard as a refinement which has no foundation in reason, and one that, in truth, avoids the true legal or constitutional question in these causes; namely, that of the right in private persons, in the use or enjoyment of their private property, to control and actually to prohibit the power and duty of the government to advance and protect the general good. We are aware of nothing peculiar to a franchise which can class it higher, or render it more sacred, than other property. A franchise is property and nothing more; it is incorporeal property, and is so defined by Justice Blackstone, when treating, in his second volume c. 3, p. 20, of the Rights of Things.' See also *The Richmond, etc. Railroad Company v. The Louisa Railroad Company*, 13 How., 71, 83; *Boston & Lowell Railroad v. Salem & Lowell Railroad*, 1, 35, 36."

In *Cincinnati vs. L. & N. R. R. Co.*, *supra*, the Court says:

"Constitutional inhibition upon any state law impairing the obligation of contracts is not a limitation upon the power of eminent domain. *The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefore.* Such an exercise of power neither challenges its validity nor impairs its obligation. Both are recognized for it is appropriated to an existing enforceable contract. It is a taking and not an impairment of its obligation. If compensation be made no constitutional right is violated."

C. The language of the Act of June 15, 1917, shows that the power of the Government to cancel contracts

was limited to contracts between third parties in which the consequent liability of the Government will be kept "within the limits of the amount herein authorized."

The cancellation of a government contract could not possibly increase the liability of the Government beyond the \$250,000,000 appropriated by the act. If the contract was made under some prior appropriation act, the damages consequent upon the cancellation could not exceed the appropriation, because the contract price would be limited by the appropriation. If made under the act itself, the amount payable thereunder, whether as damages or as contract price, could not carry the total liabilities under the act beyond the \$250,000,000, because the damages would be limited by the contract price, and that price must have been kept within the amount of the appropriation. On the other hand, the cancellation or commandeering of private contracts might carry the liabilities of the Government far beyond the \$250,000,000 limit. The language of the act in this respect, therefore, tends to show that Congress intended only to provide for the cancellation of private contracts.

The language of the act shows also that the power of the President to cancel or modify contracts is limited to those cases in which such cancellation or modification is necessary to enable him to purchase, or requisition or otherwise acquire, ships, material, etc. This appears from the

following re-arrangement of the apposite provisions of the act:

“Within the amount herein authorized ‘\$250,000,000’ for ‘the cost of purchasing, requisition, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction’ the President is hereby authorized and empowered ‘to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.’”

The act nowhere shows an intention to empower the President to cancel or modify a contract for the purpose of relieving the Government from its liabilities thereunder. The object of the act was to enable the President to incur new liabilities in a manner not elsewhere provided for by law, and this could only be, so far as the modification or cancellation of contracts is concerned, by the modification or cancellation of private contracts.

D. A gun mount and sight is “ARMAMENT” and falls within the definition “War Material” as defined in the Acts of March 4, 1917, and July 1, 1918, and does not fall within the definition “Material” as provided in the Act of June 15, 1917, and, therefore, said act does not and should not be given any application to this contract.

The Act of June 15, 1917, does not include within its terms contracts for “war material,” to wit, “arms, armament or ammunition,” nor authorize the President to cancel contracts for “arms, armament or ammunition.”

In the Act of March 4, 1917, we find the following definition:

"The words 'war material' shall include arms, armament, ammunition, stores, supplies and equipment for ships and airplanes and everything required for or in connection with the production thereof."

In the Act of June 15, 1917, we find the following definition:

"The word 'material' shall include stores, supplies, and equipment for ships and everything required for or in connection with the production thereof."

In Soule's Dictionary of English Synonyms we find the following definitions:

"A. Armament—

(2) Guns, cannon, arms, munitions of war.

"B. Equipment — Accoutrement, furniture, apparatus, rigging, gear, outfit."

The above definition supports the interpretation that Congress did not intend "armament" which would include "gun mounts and sights" to be included within the word "material" as defined in the Act of June 15, 1917, but on the other hand intended it to fall within the provision "war material" of the Act of March 4, 1917, which Act, as this court will remember, was referred to and incorporated in the fifteenth paragraph of claimant's contract.

In view of the definition in the earlier act (March 4, 1917) it is clear that if the latter act

E. A reading and construing together of the provisions of the three acts [March 4, 1917, June 15, 1917, July 1, 1918] that might be applicable to war contracts for armament including that of the claimant, will sustain the interpretation of the said Act of June 15, 1917, that the provisions authorizing the President to cancel contracts has no application to such contracts made by the United States. Such construction should be given to the Act.

1. *The power to cancel contracts in these acts is merely incidental and supplemental to the general powers authorizing the President to appropriate factories and their output from third parties on paying just compensation.*

The general scheme of the three particular acts in question is the same. The acts generally were part of the uniform annual appropriation bills. To each of them, however, was added an article giving to the President the right to exercise mandatory powers in the nature of eminent domain, and providing for the payment of just compensation to those injured by their enforcement.

Mounting costs and inflated values at that time were known. If the Navy Department should have been required to compete in the open market with others it would have been forced into unconscionable contracts. It undoubtedly would have been met with demands for very high prices based upon claims that plants were operating to capacity for others. With that situation in mind, Con-

ADDENDA TO BE INSERTED IN BRIEF OF CLAIM-
ANT, RUSSELL MOTOR CAR CO. VS. U. S. (CASE
NO. 485), AND READ AS FOLLOWING PAGE 61
THEREIN.

The Navy Department reports show and the Court of Claims finds that a gun mount is "armament" in finding that it is "ordnance" and therefore it cannot be part of the equipment of a vessel of the navy.

Paragraph fifteen of the claimant's contract required it to furnish an affidavit to the Secretary of the Navy that "it was not a party to any existing combination or conspiracy to monopolize * * * trade in structural steel, ship plates, armor, armament, or machinery" (p. 20). The claimant furnished such an affidavit (p. 2). Clearly, the United States in the very contract under consideration determined as a fact that a gun mount was "armament."

This construction and determination was corroborated and confirmed in a formal and comprehensive report made by Ralph Earle, Chief of the Bureau of Ordnance, Navy Department, to the Secretary of the Navy in report entitled "Navy Ordnance Activities, World War, 1917-1918," and formally published by the Navy Department in 1920.

Chapter 4 of the report is entitled "Guns, Mounts, and Small Arms." In the first two paragraphs of this chapter, page 55, we find the following statement:

"As has been explained in previous chapters, the principal part played by the United States Navy in the war was its share in the defeat of the submarine. The first measures for the accomplishment of this purpose were, of course, defensive ones, arming of merchant vessels, and instituting the convoy system."

* * *

"As has been previously explained under 'Arming Vessels,' the bureau's share in this diminution of submarine losses *was the provision of armament and ammunition* for naval vessels, large and small, and for merchantmen. In this chapter will be given in some detail the activities of the bureau in procuring the guns, gun mounts, and small arms for these vessels." (Italics above and later herein ours.)

Later in this same chapter, at page 62, under sub-title "Gun Mount Contracts," is the following statement:

"The bureau was assisted in its efforts to supply gun mounts by such firms as * * * [specifying 8 companies] the Russell Motor Car Co. of Buffalo, New York. These well-known and substantial companies in each case brought to bear on the problem of gun-mount production a trained and efficient engineering staff, the members of which threw themselves into the work in a manner worthy of the case they were serving." A photograph of the Russell Motor Car Company's assembly floor for three-inch anti-aircraft mounts and of such a gun and mount will be found on pages 66-1 and 66-2 of this report.

The report in particular from pages 38 to 62 makes it clear that not only were guns and gun mounts not "material" or "equipment for ships" as defined in the Act of June 15, 1917, but in fact were within the definition "war material" of the Act of March 4, 1917, and the term "armament" as therein contained. As is well known, Germany claimed it was illegal and in violation of international law to arm merchant ships and it was not until the Government of the United States authorized such arming in March, 1917, that it was done.

As stated in the above-referred-to report on page 40:

"March 12, 1917, will always be remembered as the date on which the navy decided to *arm* offensively against the submarine all merchant vessels whose voyage carried them into the danger zone."

And again on page 41:

"The first *armed* merchantman to sail for the danger zone was the *Manchuria*, sailing from New York on the morning of March 16, 1917."

And again on page 45:

"This demand for guns grew more and more urgent during the first six months of 1918, as new ships were being *completed* by every shipbuilding company in the United States," etc.

Note the word "completed." The ships as ships were "completed" prior to being armed. Guns and mounts were not part of the ship.

The Court of Claims finds, as a fact, "the gun mount and sight is an intricate piece of ordnance" (Finding VII, p. 21). As shown above ordnance clearly includes "armament" within which are "gun mounts."

The words "equipment of vessels of the navy" have an equally definite and well understood meaning, and do not include "armament," "ordnance," or "gun mounts."

One of the leading, if not the leading authority on such matters is Mahan's "*Naval Administration and Warfare*." In discussing what falls within the terminology of the equipment of a naval vessel he points out the distinction above made and on page 60, of this work, appears the following:

"Ordnance is a word which speaks for itself

* * *."

"Equipment is a term of less precise significance because of more varied and minute details. It corresponds to furnishing a building as a place to live and work in. For instance, there is embraced under this comprehensive idea the extensive and intricate electric system of lighting and motors with

the needed dynamos. Hence, also much that appertains to the movable house which a ship is, for example, anchors, charts, compasses, with navigation books," etc.

If further confirmation of this point is necessary reference is made to the report of the Secretary of the Navy for the year ending 1919, where, on pages 559-562, inclusive, is covered enumerations of articles of equipment of vessels of the navy. And again, in the report of the Secretary of the Navy for the year 1920, pages 650 and 651.

Reports of the Navy Department show that "equipment of vessels of the navy" do not include "armament," but merely the character of equipment included within the definition given by Admiral Mahan, such as boats, furniture, chests, stores, tools, materials such as iron, lumber, and nails, paints, etc.

So clearly is this division marked that articles of equipment for vessels of the navy are handled by an entirely separate bureau from the Bureau of Ordnance, which has full control of all matters relating to ordnance, arms, and armaments, including gun mounts.

Every reference deals with the problem of guns and gun mounts as "arms and armament" added by the navy as such to vessels already built and complete and definitely sets at rest any contention that they are "material" or "equipment of vessels." On this point the authority of the navy officials must surely be accepted as authoritative and final.

In the light of the foregoing the finding of the Court of Claims that a "gun mount" is "a part of the equipment of vessels" cannot legally be sustained, since under the undisputed facts these "gun mounts" were as a matter of law "arms" and "armament" as defined in the Act of March 4, 1917, and July 1, 1918.

This contention, if sustained, would definitely remove this contract from the subject-matter covered by the Act of

June 15, 1917, and would obviate the necessity on the part of this court of passing upon the applicability or construction of this act in its broader application as elsewhere discussed herein.*

*There can be no question but that claimant's gun mounts are "war material" and "armament," as defined in the Act of July 1, 1918. If the following provisions in said act, to wit: "Within the limit of the amounts appropriated therefor to modify or cancel any existing contract for the building, production, or purchase of ships or war material * * * that whenever the United States shall cancel or modify any contract * * * it shall make just compensation," applies to the contracts of the United States, as well as to private contracts, the claimant would unquestionably be entitled to its profits and compensation in the amount as elsewhere stated in this brief.*

This is so because this Act of July 1, 1918, was not in existence when claimant's contract was made on May 14, 1918, and could not, therefore, have been in the contemplation of the parties, or deemed by law as a part of such contract when made.

The Navy Department in 1919, after it had purported to cancel claimant's contract and when it was supposedly adjusting the just compensation to which claimant was entitled, specifically took the position that in adjusting these "armament" contracts, it was acting under the authority of the Act of July 1, 1918. In the Navy Department report

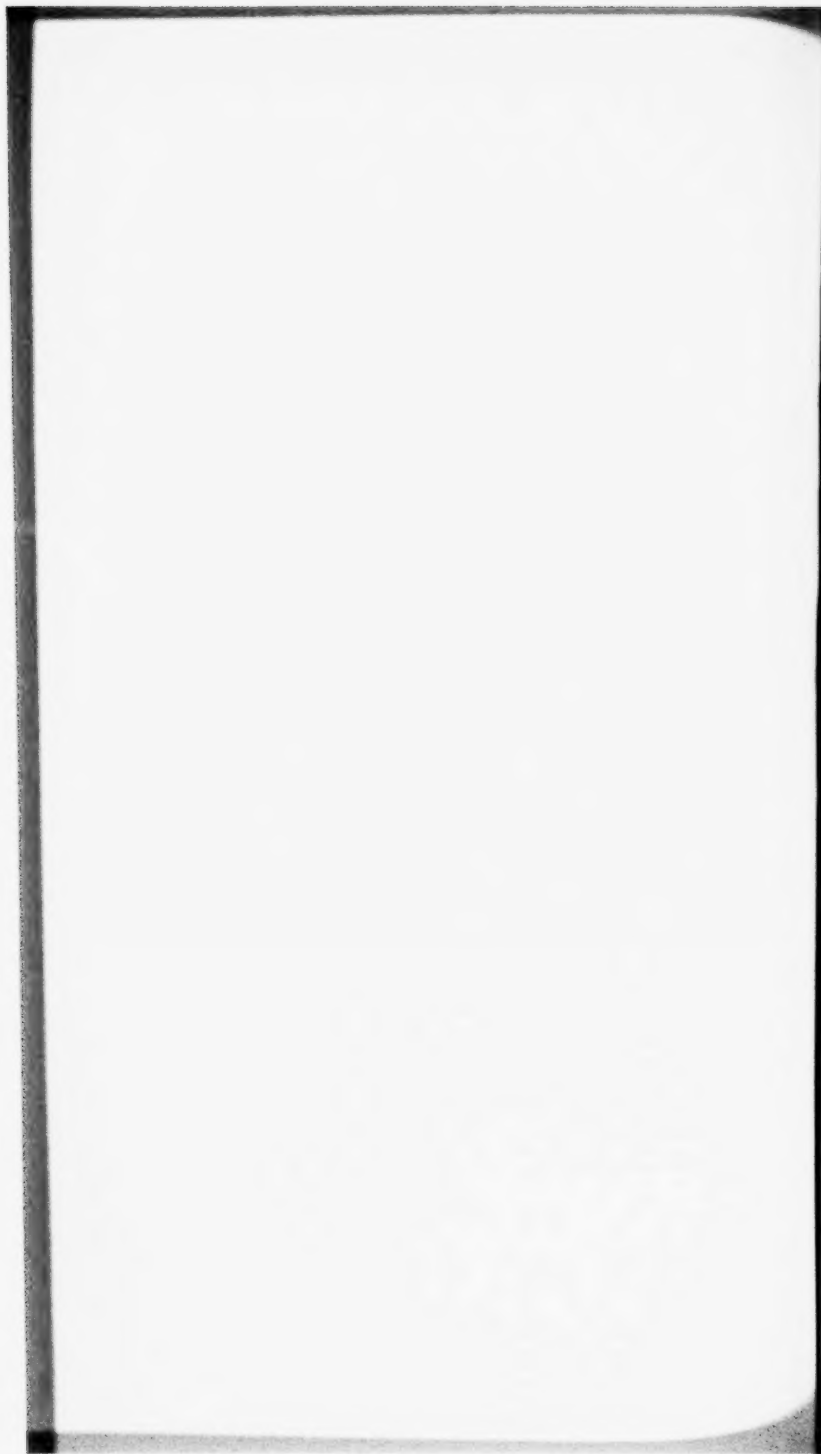
*Through inadvertence appellant's counsel for Anderson Manufacturing Company, case No. 740, submitted with this case for determination by this court, made an erroneous statement on page 28 of brief in stating that "the instant case differs materially from the Russell case, No. 485, and Freygang v. United States, No. 480, in connection with which it is submitted to this court. In neither of these cases is any question made that the subject-matter of the contract was not within the terms of the Act of June 15, 1917." This statement is untrue so far as the Russell Motor Car Co. is concerned, as the argument above set forth must clearly indicate.

entitled "Annual Report of the Chief of the Bureau of Ordnance to the Secretary of the Navy for the Fiscal Year 1919" printed at the Government Printing Office and dated August 28, 1919, we find the following statement on the top of page 8, discussing the adjustment of war contracts, "the adjustment of contracts is being performed under authority of Naval Appropriation Act (H. R., 10854, Public No. 182, Sixty-fifth Congress), approved July 1, 1918." Further supporting this contention, this report refers to claimant's contract involved in this case, making this statement on page 13:

"Settlement has been negotiated in all cases except those of * * * and one contract with the Russell Motor Car Co."

(8692)





gress gave to the President a power which would make offers from the Navy effective, and that power was required to be expressly conferred by statute.

“The power of eminent domain which resides in the state as an attribute of sovereignty is nevertheless dormant until called into exercise by an act of legislation. Until the statute authorizes an exercise of the power, it is latent and potential merely and not active or efficient, and the State can neither exercise the prerogative nor can it delegate its exercise except through the medium of legislation. Therefore, it is that whenever an attempt is made either by the officers of the state or by a corporation organized for a public purpose to take property under the power of eminent domain, the officers or body claiming the right must be able to point to a statute conferring it. In the absence of statutory authority private property cannot be invaded by this power, however strong may be the reasons for appropriation.”

In Matter of Poughkeepsie Bridge Co.,
108 N. Y. 483.

Lewis Eminent Domain, 3d Edition, Section 367 and cases cited, including Federal cases.

In the three acts under discussion (March 4, 1917; June 15, 1917; July 1, 1918) no right to modify or cancel contracts is reserved in the various Departments. Such rights are contained only in those articles which confer powers upon the President. By a careful examination of all the acts will be found that within the limits of

the amounts appropriated, the President is empowered,

- (1) to place an order for ships or war material as the necessities of the Government to be determined by the President, may require and which are of the nature, kind and quantity usually produced or capable of being produced by such person, and compliance with the orders so stated to be obligatory;
- (2) to modify or cancel any existing contract for the building, production or purchase of ships for war material in acts March 4, 1917, July 1, 1918 [to cancel future contracts for "material" act June 15, 1917] and if the contractor refused, the President was authorized to take immediate possession of any factory or any part thereof;
- (3) to require the owner or occupier of any factory in which ships were built or produced, to place at the disposal of the United States the whole or any part of the output of the factory and to deliver such output or parts in such quantities and at such times as may be specified and at such reasonable price as shall be determined by the President; and

- (4) to requisition and take over any factory or any part thereof.

It will be seen that the power of the President and the performance of his orders lacked the first essentials of a contract, to wit, free and open bargaining. The powers conferred upon the President were provisional remedies to aid the various government contracts. Under the above powers he was not authorized to contract. He was not authorized to cause an order to be entered and executed unless the person to whom it was given had a plant capable of producing the material supplied. In order that an evasion of such an order could not be made, three other powers were conferred,

- (a) He could appropriate the output of any factory; or
- (b) He could appropriate the factory; or
- (c) He could cancel or modify contracts which the owner of the factory had with others.

The scheme of the statute seems obvious.

It will be noted that each succeeding appropriation bill for the Navy increased the amounts. The Navy was perfectly competent to make its own contracts.

It was not necessary to inject the President into the situation as a purchasing agent for Government Departments. Such a situation was never intended or contemplated. The power to make such purchases already existed in the Navy.

In *United States v. Cocliss Steam Engine Co.*, 91 U. S. 321,

we find the following language in the unanimous opinion of the court, delivered by Mr. Justice Field:

“The duty of the Secretary of the Navy, by the Act of April 30, 1798, creating the Navy Department, extends, under the orders of the President, to ‘the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment of the United States.’ 1 Stat. 553. The power of the President in such cases is, of course, limited by the legislation of Congress. That legislation existing, the discharge of the duty devolving upon the secretary necessarily requires him to enter into numerous contracts for the public service; and the power to suspend work contracted for, whether in the construction, armament, or equipment of vessels of war, when from any cause the public interest requires such suspension, must necessarily rest with him. As, in making the original contracts, he must agree upon the compensation to be made for their entire performance, it would seem, that, when those contracts are suspended by him, he must be equally authorized to agree upon the compensation for their partial performance. Contracts for the armament and equipment

of vessels of war may, and generally do, require numerous modifications in the progress of the work, where that work requires years for its completion. With the improvements constantly made in ship-building and steam-machinery and in arms, some parts originally contracted for may have to be abandoned, and other parts substituted; and it would be of serious detriment to the public service if the power of the head of the Navy Department did not extend to providing for all such possible contingencies by modification or suspension of the contracts, and settlement with the contractors."

The Act of April 30, 1798, referred to in the above quotation, is still in force and effect, and will be found in the following provisions of the Revised Statutes, Section 415 being:

"ESTABLISHMENT OF THE DEPARTMENT OF THE NAVY. There shall be at the seat of Government an Executive Department, to be known as the Department of the Navy, and a Secretary of the Navy, who shall be the head thereof."

Section 417 of the Revised Statutes provides:

"PROCUREMENT OF NAVAL STORES AND EQUIPMENT OF VESSELS. The Secretary of the Navy shall execute such orders as he shall receive from the President relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment."

Act April 30, 1798, c. 35, §1, 1 Stat. 553.

As a result under the above decision, it is clear that the Navy Department, acting through the

Secretary thereof, had the power to make the contract with the claimant in the instant case. This power, however, as above authority shows, applied merely to the Government's own contracts when it came to the jurisdiction of the Secretary of the Navy to suspend, modify cancel or settle for its own contracts. These powers the Secretary has had since the Enactment of the Act above referred to in 1798. These powers are clearly distinguishable from the powers of eminent domain and the making and enforcing of mandatory powers against third parties with whom the Government did not have contracts.

What the Government did need, under the circumstances, however, was a strong-arm power of eminent domain, and as that had to be conferred upon somebody expressly by statute, it was conferred upon the President and he subsequently delegated part but not all of his powers to others. Until the statute was passed the President had no such power, nor did any other Government department. It was intended only that the President should exercise the power of eminent domain if and when the other departments ceased to function properly under the stress of the times.

No claim is made that the Russell Motor Car Company contract was the result of a strong-arm Presidential order. It was a free and open con-

tract negotiated with the Navy Department and it must have been made within the limit of the appropriation made for the Navy for the fiscal year in question.

The words "just compensation" used in the statute strengthen the contention that that part of the bill in question was an eminent domain statute. The words "just compensation" are never found in a statute or constitution unless the provision within which they are found is an eminent domain provision.

There would be no reason for the Government to give an order to a person to furnish a ship when it already had the right to have the ship from the person by virtue of a contract entered into by mutual consent. A reading of these mandatory powers in each of the acts shows that the first one of the powers authorizes the President, within the limits of the amounts appropriated therefor, to place orders with any person for ship or material, and requires compliance on the part of any person with such orders. These orders, of course, would not apply to Government contracts since these are mandatory and do not require the consent of the person falling within their scope. The second provision of the Acts of March 4, 1917, and July 1, 1918, permits the *cancellation* of contracts under certain conditions. The Act of March 4, 1917, relat-

ing to *existing* contracts and requiring the exercise of these mandatory powers before March 1, 1918, while the Act of July 1, 1918, permits the modification and cancellation of existing contracts for six months after a final treaty of peace shall be proclaimed between this Government and the German Empire. The authority under the Act of March 15, 1917, was to expire at the same time as the Act of July 1, 1918. This court will take judicial notice of the fact that by the joint resolution of Congress, approved April 6, 1917, war was declared to exist between the Imperial German Government and the United States. It is apparent, therefore, that the Act of March 4, 1917, was passed in view of the National emergency, and in order to enable the United States to get ready in the event that war thereafter be declared. The Government was, therefore, authorized to modify or cancel existing contracts with third parties in order to enable the President to carry out his powers of eminent domain in the placing of orders for material, as above stated as well as to enable him to requisition the output of factories or to take over the use of factories as provided in subdivisions 3 and 4 of this Act. These powers, however, as stated above, were to cease on March 1, 1918.

War had been declared at the time of the passage of the Act of June 15, 1917. The scope and character, however, of this Act, as discussed elsewhere in this brief, primarily, and as we

submit, exclusively dealt with the Shipping Board and with private contracts and not with Government contracts. Nevertheless, the scope of the mandatory powers of the President in regard to placing of orders, requisitioning of materials and factories, was of the same general character as contained in the Act of March 4, 1917. The same statement holds in regard to these mandatory provisions in the Act of July 1, 1918. It will thus be seen that the provisions in regard to the cancelling of contracts in none of the Acts should be held to apply to the Government's own contracts. It is true the statutes of March 4, 1917, and July 1, 1918, might be somewhat ambiguous in this regard, as the words used in those statutes contained authority to modify and cancel existing contracts; still, this provision was apparently adopted by Congress to fortify the President in his mandatory powers by virtue of which he was authorized to place orders with any person to produce ships or war material, to requisition factories and take over the use of the same by the Government, all of which powers clearly related to third persons and not to cases of where the Government had a voluntary contract with a third person for a particular purpose. If the Government itself already had the contract, then there was no need of mandatory powers.

We thus see that the scope of each of the three acts, so far as authorizing the Government to can-

cel its own contracts, was never intended by Congress.

Assuming for the sake of argument, but not conceding, that the provisions of the Acts of March 4, 1917, and of July 1, 1918, which permit the President, within the limits of the amounts appropriated therefor, to "modify or cancel any existing contract," is applicable to contracts with the Government, still, the provision of the Act of March 4, 1917; would be inapplicable here, as the contract in this case was not existing at that time.

If the provision of the Act of July 1, 1918, which was in force at the time the Government sought to cancel the claimant's contract, although not in existence at the time the contract was made, should be deemed applicable to the claimant's contract, still, it cannot properly or legally deprive the claimant of its proper measure of damages, based upon the rule in force at the time the contract was made, to wit, the difference between the contract price and the cost of performance.

This would be to deprive claimant of its lawful property rights under its contract without "just compensation" and in violation of the Fifth Amendment to the Constitution of the United States.

Monongahela Navigation Co. vs. U. S.
148 U. S. 312.

Smyth vs. Ames, 169 U. S. 466 and other cases cited herein.

Claimant's property right in its contract cannot be taken without just compensation therefor.

2. The words "to modify, suspend, cancel or requisition" as used in the Act of June 15, 1917, are meant to equally and consistently operate upon the same class of contracts and when these words are properly interpreted this class means contracts between third parties and not the Government's own contracts.

The provisions of the Act of June 15, 1917, are dissimilar from those of the two above-mentioned acts, and clearly do not apply to contracts made with the Government but are applicable only to contracts made between third parties. The words "to modify, suspend, cancel or requisition," being four words which should be each operative upon the same class of contracts under the rule of construction of *ejusdem generis*.

United States vs. Salen, 235 U. S. 237 at p. 247 and cases *supra*.

The word "requisition," which concededly relates to contracts between third parties, is a clear indication of the class of contracts to be regulated by the other three words and to be consistent will only permit the application of all of these words to the class of private and not to the distinct class of Government contracts.

In *Greenleaf v. Goodrich*, 101 U. S. 278, Mr. Justice Strong, in delivering the unanimous opinion of the court, said at page 281:

"Undoubtedly, acts of Congress in *pari materia* are to be construed with reference to each other and it may be admitted that when, in a later act, Congress uses expressions that had a recognized meaning in a former act relating to the same subject, they intended to use them in the same sense in which they were first used, that is, with their recognized meaning. But this rule has no bearing upon a case like the present. * * * As we have said, the changes of classification and of phraseology made in the Act of 1862 show an intention to take out of the mixed-material clause of the former act (which was limited to manufactures not otherwise provided for) some descriptions of goods which the act placed there * * *. Why change the language."

So why change the language of the Act of March 4, 1917, and add the words to "suspend" and "requisition" in the Act of June 15, 1917, unless it was to clearly indicate that the only class of contracts falling within the scope of the last mentioned act, were private contracts between third parties.

In Louisville and Nashville Railroad Company v. Mottley, 219 U. S. 467, the Court states, at page 475, in discussing different phraseology in a later statute as affecting an earlier one:

"We cannot suppose that this change was without a distinct purpose on the part of Congress. The words "or different," looking at the context, cannot be regarded as superfluous or meaningless. We must have regard to all the words used by Congress, and as far as possible give effect to them."

And also in

Bugajewitz v. Adams, United States Immigration Inspector, 228 U. S. 585,

in the opinion of the court we find, at page 591:

"The change in the phraseology of the reference indicates the narrowed purpose."

In

United States v. Bashaw, 50 Fed. 749,
(C. C. A., 8 Circuit),

in the court's opinion at pp. 753 and 754, is found the following language:

"If it was the intent of Congress, in passing the amendatory Act of 1873, to leave the question of compensation to the attorney unchanged, why was it that Congress struck out the words "for expenses incurred and services rendered in prosecutions for such fines and personal penalties," etc., and inserted the words found in section 838? The natural presumption is that the phraseology of the statute was changed in order to change its meaning. The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a material change in the language of the act."

The above case is referred to and cited in the recent case of

United States v. Field, 255 U. S., 257, the court in its opinion, at pp. 264, 265, stated:

"It would have been easy for Congress to express a purpose to tax property passing under a general power of appointment exercised by a decedent had such a purpose existed; and none was expressed in the act under consideration. In that of February 24, 1919, which took its place, the section providing how the value of the gross estate of the decedent shall be determined contains a clause precisely to the point (§402 (e), 40 Stat. 1097): 'To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except,' etc. Its insertion indicates that Congress at least was doubtful whether the previous act included property passing by appointment. See *Matter of Miller*, 110 N. Y. 216, 222; *Matter of Harbeck*, 161 N. Y. 211, 217-218; *United States v. Bashaw*, 50 Fed. Rep. 749, 754."

F. The construction for which the Government contends that the Act of July 15, 1917, authorizes the President to cancel future contracts for "war material," including "armament," with third parties, would make the Act of July 1, 1918, "to cancel any existing contract" for the building, production or purchase of ships or "War Material" surplusage and valueless.

The provisions of the Acts of March 4, 1917, June 15, 1917 and July 1, 1918, by virtue of which

the President was given mandatory powers of eminent domain, relative to the placing of orders, requisitioning of factories and materials and cancelling contracts are in *pari materia*. If the Act of June 15, 1917, which permits the cancellation of future contracts, should be construed to apply to contracts to which the Government is a party, then clearly there was no need for the provision in the Act of August 1, 1918, wherein the President was authorized to cancel existing contracts. It will be remembered that the Government sought to cancel claimant's contract in the case at bar on November 23, 1918, when both the Acts of June 15, 1917, and August 1, 1918, were in force.

The construction submitted by claimant that the Act of March 4, 1917, and July 1, 1918, apply to "war material" including "armament" while the Act of June 15, 1917, does not apply to "armament" within its definition of "material" gives a consistent, harmonious and affective interpretation to all the provisions of these acts. The contention of the Government would create inconsistency and make some of the provisions of the acts useless and surplusage.

In

Peck v. Jenness, 7 How. 612,
the Court in delivering its opinion said at page 623:

"But it is among the elementary principles with regard to the construction of statutes, that every section, provision, and clause of a statute shall be expounded by a reference to every other; and if possible, every clause and provision shall avail, and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together."

A good statement of the rule is found in

United States vs. Baltimore & O. S. W.

R. Co., (C. C. A. 6th Cir.) 159 Fed. 33,

the court in delivering its opinion said at pp. 36 and 37:

"The construction which we propose leads to the harmonious operation of the several provisions of the statute more effectively than any other which has been suggested. And if, as no one doubts, the law is not void for uncertainty and should be given effect, our only duty is to ascertain what it means and execute it accordingly. The maxims and rules adopted for the purpose of interpreting the meaning of a statute require that we attend to all its provisions, and, if possible, attribute to the language in which each is expressed a meaning which will permit other provisions to have their due effect. This doctrine is so well settled that the rules by which it is formulated have become axiomatic. Two of them, '*ex antecedentibus et consequentibus fit optima interpretatio*' and

'*noscitur a sociis*,' are expounded in Broom's Legal Maxims at page 555 and following. A good statement of the doctrine as applied to the case before us is contained in 26 A. & E. Encycl. of L. 616 (2d Ed.), where it is said:

'In construing a section of an act, regard must be had to the language of the clause itself, and, second, to other clauses in the same act, and that construction should be adopted which makes the whole act stand consistently together or reduces the inconsistency to the smallest possible limits.'

We add some of the cases in the Supreme Court in illustration. *Pennington vs. Core*, 2 Cr. 33, 52; *Alexander v. Alexander*, 5 Cr. 1, 7, 8; *Market Co. v. Hoffman*, 101 U. S. 112, 116, 117, 25 L. Ed. 782; *Kohlsaat v. Murphy*, 96 U. S. 153, 159, 160, 24 L. Ed. 844; *Neal v. Clark*, 95 U. S. 704, 709, 24 L. Ed. 586."

In *Ruling Case Law*, under title "Statutes", Vol. 25, p. 1009, the rule is stated as follows:

"248. Effect of Division into Sections or Titles. The construction of a statute can ordinarily be in no wise affected by the fact that it is subdivided into sections or titles. A statute is passed as a whole and not in parts or sections and is animated by one general purpose or intent. Consequently the several parts or sections of an act are to be construed in connection with every other part or section and all are to be considered as parts of a connected whole and harmonized, if possible, so as to aid in giving effect to the intention of the lawmakers. It is a general rule in the construction of statutes that when in the early and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus dis-

closed controls and interprets all subsequent sections, and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; but those subsequent sections will be understood (unless there be words of restriction and limitation therein) as coextensive with and applicable to the scope, and the full scope and extent, of the powers theretofore granted. The presence of a provision in one section of a statute and its absence from another are however, an argument against reading it as implied by the section from which it is omitted."

In *Volume 36, Cyc.*, p. 1132, under title "Statutes", we find the following statement:

"And where one part of the statute is susceptible of two constructions, and the language of another part is clear and definite and is consistent with one of such constructions, and opposed to the other, that construction must be adopted which will render all clauses harmonious."

The following cases support the rule that where two statutes are in *pari materia*, they should be construed together and effect given to all the provisions of each, provided such construction is reasonable.

Wilmot v. Mudge, 103 U. S. 217, at page 221.

"In this manner both provisions of the bankrupt law can stand and be consistent. Thus construed there is no conflict between them, and each has its appropriate sphere of

operation and the effect which the law makers intended.

The rules of construing statutes in like cases with the present are so well understood as to need no citation of authorities.

They are, first, that effect shall be given to all the words of a statute, where this is possible without a conflict; and, second, that as regards statutes in *pari materia* of different dates, the last shall repeal the first only when there are express terms of repeal, or where the implication of repeal is a necessary one. When repeal by implication is relied on it must be impossible for both provisions under consideration to stand, because one necessarily destroys the other. If both can stand by any reasonable construction, that construction must be adopted. We think that which we have already suggested reconciles the two provisions without doing violence to either."

Frost v. Wenie, 157 U. S. 46, page 58

"It is to be observed that although the words of the act of December 15, 1880, are broad enough, if literally interpreted, to embrace *all* the lands within the abandoned Fort Dodge military reservation north of the Atchison railroad, there are no words in it of express repeal of any former statute. It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the

same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute. *McCool v. Smith*, 1 Black, 459, 468; *United States v. Tynen*, 11 Wall, 88, 93; *Red Rock v. Henry*, 106 U. S. 596, 601; *Henderson's Tobacco*, 11 Wall. 652; *King v. Cornell*, 106 U. S. 395, 396."

U. S. v. Healey, 160 U. S. 136, at page 147.

United States v. Lee Yen Tal, 185 U. S. 213, p. 221.

"In the case of statutes alleged to be inconsistent with each other in whole or in part, the rule is well established that effect must be given to both, if by any reasonable interpretation that can be done; that 'there must be a positive repugnancy between the provisions of the new laws and those of the old; and even then the old law is repealed by implication only *pro tanto*, to the extent of the repugnancy;' and that 'if harmony is impossible, and only in that event, the former is repealed in part or wholly, as the case may be.' *Wood v. United States*, 16 Pet. 342, 363; *United States v. Tynen*, 11 Wall, 88, 93; *State v. Stoll*, 17 Wall. 425, 431. In *Frost v. Wanie*, 157 U. S. 46, 58, this court said: 'It is well settled that repeals by implication are not to be favored. And when two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a

later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore, to displace the prior statute."

Market Co. v. Hoffman, 101 U. S. 112, p. 115.

"We are not a liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times. Another rule equally recognized is that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each."

(g) The parties to the contract never intended, believed or agreed that the Act of June 15, 1917, should apply to the contract herein.

This Court will remember that there is no statement or reference in contract 1498, or the specifications annexed thereto, that the same were made under or to be regulated by the Act of June 15, 1917.

Paragraph "Fifteenth" of the contract provides, "this contract having been awarded com-

formably to the restrictive provisions in the Naval Appropriation Act of March 4, 1917, upon the understanding * * * *” (pp. 19, 20), is a clear indication that the only specific act or statute which the parties had in mind at the time of making the contract was the statute mentioned therein. Admiral Kearney, acting Chief of the Bureau of Ordnance, Navy Department, sent the formal notification under date of November 23, 1918, to the claimant, advising it in part as follows:

“The Secretary of the Navy having authorized cancellation of the company's contract No. 1498 for 250 3" anti-aircraft gun mounts, the company is hereby directed to cease all work in connection therewith not later than December 2, 1918.

“A just and fair settlement will be made as provided by the terms of the contract and in accordance with the statute covering such cases. The details of settlement will be arranged with this bureau.” (p. 125).

This Court will notice that this letter contains no reference to the statute of June 15, 1917. It contains no statement that the Secretary of the Navy purports to act under the statute of June 15, 1917. It contains no statement that the Secretary of the Navy purports to act by virtue of the delegation to him by the President of the United States of any powers granted the President under this act. It contains no statement that the Secretary of the Navy is purporting to act under and by virtue of the executive order of the President, dated August 21, 1917, (quoted *supra*), or under any other order. It contains no statement that

any action taken by the Secretary of the Navy regarding the "cancellation" of the contract is taken under any statute. The only reference to a statute in the letter is that "a just and fair settlement will be made as provided by the terms of the contract and in accordance with the statute covering such cases."

There has been statutory authority authorizing the Secretary of the Navy to, in the first instance, make proper settlements with contractors whose contracts the Government has decided not to carry out, from 1798.

United States v. Corliss Steam-Eng. Co.,
91 U. S. 321.

The written contract entered into by the parties was permanent in nature; contained no provisions for cancellation, nor any rules for measuring damages in such an event. Did not the claimant fairly have the right to assume that the Secretary of the Navy was entering into such a permanent contract in compliance with his general powers as head of the Navy Department, and that the only act that had any reference to the claimant's contract was the one specifically mentioned therein? Is not this position corroborated by the action of the Secretary of the Navy and the notice which was sent under date of November 23, 1918, when the claimant was directed to cease work under the contract? When the claimant was notified that upon its ceasing work settlement would be made as provided by the terms of the contract

and in accordance with the statute covering such cases, it had the fair right to assume that such settlement would be made in compliance with the legal principle long adopted and approved by this court, that a party to a contract, who is entitled to recover damages and compensation from the other party who refused to proceed with the contract, shall have the same based upon the difference between the contract price and the full cost of performance.

We submit that all the facts and circumstances surrounding the making of this contract, sustain the contention that under the well recognized maxim, "*expressio unius est exclusio alterius*," the distinctive incorporation in the contract of the restrictive provisions of the statute of the Naval Appropriations Act of March 4, 1917, excluded from being a part of the contract the various other provisions of other statutes, including the provisions of the Act of June 15, 1917. The contract and specifications were prepared by the Navy Department and when doubtful should not be construed to incorporate therein or to have the same regulated by doubtful and ambiguous statutes which certainly were not in the contemplation of the Secretary of the Navy, or any officer of the claimant. The construction of these acts had never been up in this Court for determination. Indeed, the Court of Claims, itself, in April, 1921, was of the apparent opinion that the Act of

June 15, 1917, did not apply to contracts such as the one in this case.

College Point Boat Corporation vs. U. S.,
56 C. Cls. 218.

Later the Court in the Meyers Scale case (*supra*) and in the present one, reversed itself. Why, however, should the claimant be deprived of its clear and unambiguously expressed contract rights by the unREFERRED to, undiscussed and unconstrued provisions of the Act of June 15, 1917, giving the President mandatory powers to be exercised in certain specific cases.

So many reasons for the inapplicability of this Act to the instant case have been pointed out above, that we respectfully submit this Court will not deprive the claimant of its just right to compensation based in accordance with law upon the difference between the contract price and the cost of performance.

POINT III.

Assuming but not admitting, that the Government is right in its position that the cancellation of the contract involved is governed by the provisions of the Act of June 15, 1917, which relate to "emergency shipping fund," still the Court of Claims erred in its findings of fact and conclusions of law, in that it did not measure the "just compensation" to which claimant is entitled in its judgment by the difference between the contract price and the cost of the full performance thereof to it.

The term "just compensation" is one that is taken primarily from the Constitution of the United States and has been generally adopted in the constitutions of various states, as pointed out in the Monongahela case (*infra*). Compensation is required to be made for and should be included to cover the equivalent of the property taken. If in the case at bar, the plaintiff's contract had been with a party other than the Government, and the Government deprived it of its power to complete the same, then just compensation, or the equivalent of the property taken, would necessarily have included compensation to the plaintiff for its future profits and it would have been entitled to be compensated in accordance with the rule of damages laid down in *Purcell v. United States (supra)*. Is the damage to the claimant any less because its contract is can-

cancelled by the Government and made with the Government, than if it were cancelled by the Government and had been made with a third party? We submit clearly no.

That small part of the Act of June 15, 1917, relating to "Emergency Shipping Fund" does not give the President, or such agency as he may choose, the unconditional right to cancel a contract which creates directly with, and makes a part of the use of this mandatory power the equally mandatory obligation upon, the United States to make "just compensation" to the person entitled to such compensation, which, in the first instance, is to be determined by the president, but if such amount so determined is unsatisfactory to the person so entitled, then 75% thereof is paid by the United States to such person who is given by this very statute the lawful right to sue the United States for such further sum in addition to the said 75% as will be "just compensation" to the person who has been deprived of his property by virtue of this mandatory power of eminent domain.

The law does not provide that the Government has the unconditioned, absolute and untrammelled right to cancel the contract without paying the "just compensation" to the claimant for depriving it of its right to carry out and fulfill its written contract. Nor does the law provide that in estimating the "just compensation," no damages will be allowed for "anticipated profits", as de-

fined in the "Dent Act" in adjusting a contract "upon a fair and equitable basis." The Dent Act, in substance, allows a claimant damages on the basis of a *quantum meruit* simply to the date on which the contract is cancelled. The term "just compensation" in the Constitution of the United States and in the various state constitutions has never been interpreted in this Court, or do we know of any case in any other court, in a manner that would deprive a person whose contract is appropriated, of his legitimate clear profit based upon the difference between the contract price and the cost of performance. Either Congress in passing the statute of June 15, 1917, or the Navy Department in its contract, would have been at perfect liberty to have inserted such provisions, either in the Act or in the contract, and if the claimant had thereafter entered into the contract (it being conceded for the sake of this argument that the Act applied to the Government's own contracts and not simply to private contract), that the claimant would not be entitled to its compensation as here contended for. Such is not the case here. Claimant's contract, from all that appears upon the fact thereof, was never entered into by virtue of the "Emergency Shipping Fund" provisions of the Act of June 15, 1917. This Court may possibly construe this Act so that claimant's rights may be subject to appropriation under latent powers of eminent domain conferred upon the President. The grant-

ing of such mandatory powers, however, did not and does not decrease or diminish the value or extent of the claimant's rights under its contract including that of performing the same.

These latent powers conferred upon the President under the provisions of this Act, were merely intended to authorize the President to lawfully direct the claimant to stop work under its contract and thereafter to "value" the "rights of the claimant in its contract" and in the place of permitting the full performance thereof, to give the claimant "the full and perfect equivalent for the property taken," "determined by its productiveness—the profits which its use brings to the owner." In this Act Congress intended to endow our sovereign Government with authority to lawfully condemn contracts so that persons who had contracted with the Government would not heap odium upon or criticise the President or his duly constituted agency for mandatory orders appropriating factories and their output or cancelling contracts without authority in law.

The machinery created by the "Emergency Shipping Fund" provisions may properly be argued to have given legal color to the cancellation of contracts instead of having the Government sued for an unlawful breach of the contract within the principles and along the lines sustained by this Court in the case of *United States v. Purcell* (*supra*).

Congress, however, if it made claimant's contract subject to the Government's powers of eminent domain, never thereby, we submit, intended to lessen the value of claimant's property rights, nor to deprive it of its right to complete its contract by virtue of the authority conferred upon the President in the "Emergency Shipping Fund" provisions of the Act of June 15, 1917.

The Act coupled with the right of appropriating and cancelling claimant's contract created the duty upon the United States to pay "just compensation" therefor. Congress, we submit, no more intended to lessen the value of the claimant's contract or deprive it of its right to perform the same by this Act without paying a full equivalent therefor as "just compensation" than it intended that the claimant could be deprived of its factory, existing leases and contracts, without the Government paying full value therefor, provided the same were condemned either by the Secretary of the Treasury for the purposes of public buildings or lighthouses, under the Act of March 3, 1883, c. 143 (22 Stat. 605) or by the Secretary of War in its authority to him to condemn lands for aviation purposes under the Act of August 29, 1916, c. 418 (39 Stat.). Clearly if the Secretary of War or the Secretary of the Treasury had condemned the claimant's plant and contract, the United States would have been required to pay as "just compensation" therefor; the value of its right to perform its contract, to wit, the difference between the contract price and the cost of full performance.

Powers of eminent domain existed in the Secretary of the Treasury and the Secretary of War at the time claimant entered into its contract and it is to be assumed that claimant must be held to have contracted in the light of the powers of eminent domain theretofore conferred upon the United States. We doubt even if the Government contended that if claimant's contract had been taken by the Government under its powers of eminent domain upon paying just compensation under other provisions creating powers of eminent domain, than those specified in the "Emergency Shipping Fund" paragraphs of the Act of June 15 1917, the claimant would not have been entitled to its compensation as herein claimed for.

How then can it be fairly contended by the Government that the value of the claimant's rights appropriated, are any less or any different or that it is not entitled to the same just compensation when the powers of eminent domain are created and exercised by the President under the head "Emergency Shipping Fund" provisions?

The Act of June 15, 1917, authorized the President to appropriate, lawfully, factories, their output, materials, ships, and the "charter of such ship," for the purpose of carrying on the war, but the obligation of paying just compensation was simultaneously created. Would this court sustain the contention that if the United States appropriated or cancelled the charter of a ship, the owner

of which had existing contracts for freight which would have yielded a handsome profit, that "just compensation" to the owner would not have entitled him to the profit that his use of the ship under his contract would have given him? We submit clearly no, otherwise the owner would have been deprived of his property without just compensation in violation of the fifth amendment to the Constitution of the United States.

The terms "just compensation" in the Constitution of the United States, as well as in the various states, have always been held to entitle a claimant to the full and perfect equivalent of any of his property taken, including his right to clear profits of which he may have been deprived by the exercise of the powers of eminent domain. These provisions of "just compensation" have never been construed or intended to alter or change the value or extent of the property condemned or appropriated. The fact that claimant may be held to have made its contract in the light of the possible exercise by the President of his mandatory powers to cancel the same in carrying on the war upon making "just compensation" does not deprive it of knowledge which it may assume to have had that the highest courts in our lands, including this Honorable body, had determined that when a person is deprived of his contract rights by virtue of the powers of eminent domain, that the terms "just compensation" entitled it to receive the full and perfect equivalent of his property and the profits which

its use or the profits which in this case the Court of Claims has found as a fact, this claimant would have made by its full performance of the contract in question, except for being stopped by the Navy Department.

We respectfully submit for this court to place a contrary interpretation on the provisions contained in "Emergency Shipping Fund" contained in the Act of June 15, 1917, would not be in accordance with its former rulings, but would deprive this claimant of a valuable and clear property right which it fairly and honestly owned and of which it should not be deprived without giving it the "just compensation and profit" to which its use entitled it.

Authorities will be cited later in this point which we respectfully submit sustain and fortify our contention.

As stated in *Hollerbach v. United States*, 233 U. S. 165, at pages 171, 172:

A Government contract should be interpreted as are contracts between individuals, with a view to ascertaining the intention of the parties and to give it effect accordingly, if that can be done consistently with the terms of the instrument."

It cannot fairly be denied that in many cases there would be no other loss from the cancellation except loss of profits, and that the provision for just compensation to the contractor could

not be enforced without an allowance to him for loss of profits. For example: suppose a profitable contract in which the Government furnished the plant and the materials and the contractor the labor only, and for the performance of which no special outlay by the contractor was required. Suppose the cancellation of this contract by the Government when four-fifths completed—all earned compensation having been paid up to that time. How, in such a case, would it be possible to compensate the contractor except by an allowance for his loss of profits in respect to the uncompleted portion of the contract? Is he to be told that his paid compensation for the completed portion includes compensation for the cancelled portion also?

The decision in question would make it necessary, in allowing just compensation to distinguish between private contractors and government contractors, when there is nothing in the Act to justify the distinction. For example: suppose the requisitioning or commandeering of a plant engaged in the performance of a profitable private contract, and the operation of the plant by the Government for its own purposes. How would it be possible to give just compensation to the owner and contractor in such a case without an allowance to him for the loss of his profits on the work that was in progress? How could a reasonable allowance for the seizure of his property be made without taking into consideration the loss

resulting from the destruction of his business? Or, suppose the commandeering of a contract between private parties for the manufacture of an article on which the contractor was making a profit of fifty per cent. Would not the United States, seizing the whole of the contractor's output of that article, be required in common honesty to pay him a price for the article that would yield him a profit of fifty per cent? If the Act applies to Government contracts as contended by the defense, as well as to private contracts, it makes no distinction between them as to the just compensation to be awarded the contractor. Has the court the right to make such distinction and say that, in the case of the private contractor there may be and in that of the Government contractor there may not, be an allowance for loss of profits?

Because there is no authority to allow compensation beyond the contractor's actual outlay except in those cases in which the contract was a profitable one the allowance must necessarily include prospective profits. If the contractor was so lacking in judgment as to make a contract at a figure that would leave him nothing over and above his expenses, including those for special facilities, the cancellation of that contract would be a benefit to him, and hence afford no ground of recovery against the Government.

Assuming (but not conceding) that the Act of June 15, 1917, might be interpreted as authorizing the Government to cancel claimant's contract in the case at bar on making "just compensation" as

therein provided, it is clear that this being an eminent domain act, the claimant's contract is a property right entitled to the protection of the Constitution of the United States. The claimant could only be lawfully deprived of its contract by paying it the damages to which it was entitled by law. In other words, the claimant, under the definition of "just compensation" is entitled to have its damages estimated in accordance with the rules laid down in *Purcell vs. United States* (*supra*), and other cases cited herein.

"Having taken the lands of the defendants in error, it was the duty of the Government to make just compensation as of the time when the owners were deprived of their property. *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 341."

United States v. Rogers, 225 U. S. 163, p. 169.

Monongahela Navigation Co. v. U. S.; 148 U. S. 312.

This was a proceeding to condemn a lock and dam of the plaintiff company. Held: The company was entitled to recover compensation from the United States for the taking of the franchise to exact tolls, as well as for the value of the tangible property taken, under the provisions of the Fifth Amendment to the Constitution. On page 325 and following, Brewer, J., said:

"The language used in the Fifth Amendment in respect to this matter is happily chosen. The entire amendment is a series of negations, denials of right or power in the government, the last, the one in point here,

being, 'Nor shall private property be taken for public use without just compensation.' The noun 'compensation' standing by itself carries the idea of an equivalent. Thus we speak of damages by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being the equivalent for the injury done, and the latter imposed by way of punishment. So that if the adjective 'just' had been omitted, and the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation should be the equivalent of the property. And this is made emphatic by the adjective 'just.' There can, in view of the combination of those two words, be no doubt that the compensation must be a full and perfect equivalent for the property taken. And this just compensation, it will be noticed, is for the property, and not the owner. Every other clause in this Fifth Amendment is personal. 'No person shall be held to answer for a capital, or otherwise infamous crime,' etc. Instead of continuing that form of statement, and saying that no person shall be deprived of his property without just compensation, the personal element is left out, and the 'just compensation' is to be a full equivalent for the property taken. This excludes the taking into account, as an element in the compensation, any supposed benefit that the owner may receive in common with all from the public uses to which his private property is appropriated, and leaves it, to stand as a declaration, that no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner.

* * * * *

“How shall just compensation for this lock and dam be determined? What does the full equivalent therefor demand? The value of property, generally speaking, is determined by its productiveness—the profits which its use brings to the owner. Various elements enter into this matter of value. Among them we may notice these: Natural richness of the soil as between two neighboring tracts—one may be fertile, the other barren; the one so situated as to be susceptible of easy use, the other requiring much labor and large expense to make its fertility available. Neighborhood to the centers of business and population largely affects values. For that property which is near the center of a large city may command high rent, while property of the same character, remote therefrom, is wanted by but few, and commands but a small rental. Demand for the use is another factor. The commerce on the Monongahela river, as appears from the testimony offered, is great; the demand for the use of this lock and dam constant. A precisely similar property in a stream where commerce is light, would naturally be of less value, for the demand for the use would be less. The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earnings to its owner. For each separate use of one’s property by others, the owner is entitled to a reasonable compensation; and the number and amount of such uses determine the productiveness and the earnings of the property, and, therefore, largely its value. So that if this property, belonging to the Monongahela Company, is rightfully where it is, the company may justly demand from every one making use of it a compensation; and to take that property from it deprives it of the aggre-

gate amount of such compensation which otherwise it would continue to receive."

So in the case at bar "just compensation" to claimant means the "full and exact equivalent" "determined by its productiveness—the profits which its use" would give the claimant. This undisputably would be the sum of \$726,120.15, to-wit the difference between the contract price and the cost of full performance to the claimant.

Most of the authorities dealing with the right of an owner to his profits or the productive use of his property, have come before this Court in cases where the value of the property of public utilities has been involved either in connection with the fixing of rates or actions of state or federal bodies confiscating their property. In all of them, however, the proposition has been recognized that an owner is entitled to the profits which the use of his property tangible or intangible would give him. The United States can only deprive the owner of it by paying "just compensation" as required by the 5th Amendment to the Constitution of the United States.

In *Cleveland Railway Co. vs. Backus*, 154 U. S. 439, 445, a taxation case, it is said:

"But the value of property results from the use to which it is put and varies with the profitability of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results

from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put."

In *Cotting vs. Kansas City Stock Yards*, 183 U. S. 79, the court said of the man engaged in operating a public utility:

"He has a right to do business. He has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in a quasi-public service independent of legislative action. In any action to recover for an excessive charge, prior to all legislative action, who ever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered"?

The court further said:

"It does not follow therefrom that the legislature has power to reduce any reasonable charges because by reason of the volume of business done by the party he is making more profit than others in the same or other business. The question is always not what does he make as the aggregate of his profits, but what is the value of the services which he renders to the one seeking and receiving such services."

In *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S. 362, 410, 412, a confiscation case, it is said:

"If the State were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature? Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefit at less than its *market value*?" * * * * "And yet justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others".

It is manifest that this statement could not have been made if the court had understood that the earning power of the road was not a factor for consideration in the determination of its value.

In *Adams Express Co. vs. Ohio State Auditor*, 166 U. S. 185, the express companies there involved were found to have tangible property of the total value of \$4,189,818.57. They claimed that taxes should be levied against them on that basis. It was found, however, that the properties of these companies possessed large intangible values based largely upon their earnings. The court said, page 220:

"Now, it is a cardinal rule which should never be forgotten that whatever property is

worth for the *purposes of income and sale* it is worth for purposes of taxation."

In *Smyth vs. Ames*, 169 U. S. 466, a confiscation case, the rule laid down by the court makes it mandatory that in the determination of the value of a railroad property *its earning power* and its structural value must both be considered. The court said, page 546:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be *the fair value of the property being used by it* for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, *the amount and market value of its bonds and stock*, the present as compared with the original cost of construction, the *probable earning capacity of the property under particular rates prescribed by statute*, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon *the value* of that which it employs for the public convenience."

Galveston Electric Co. vs. City of Galveston, Supreme Court, U. S., decided April 10, 1922.

In *Galveston Electric Co. v. City of Galveston*, Supreme Court United States, October Term, 1921, Decided Apr. 10, 1922, advance opinions, Vol. 13, p. 382, the Court said:

"In determining the value of a business, as between buyer and seller, the good will and earning power due to effective organization are often more important elements than tangible property. Where the public acquires the business, compensation must be made for these; at least, under some circumstances. *Omaha v. Omaha Water Co.*, 218 U. S. 180, 202, 203, 54 L. Ed. 991, 1000, 1001, 48 L. R. A. (N. S.) 1084, 30 Sup. Ct. Rep. 615; *National Waterworks Co. v. Kansas City*, 27 L. R. A. 827, 10 C. C. A. 653, 27 U. S. App. 165, 62 Fed. 853, 865."

A few cases to the same effect:

See

Wilmington Railroad vs. Reid, 13 Wallace 264;

Adams Express Company vs. Ohio State Auditor, 165 U. S. 194;

Omaha vs. Omaha Water Co., 218 U. S. 180;

Cedar Rapids Gas Light Case, 223 U. S. 655;

Minnesota Rate Cases, 230 U. S. 352;

Des Moines Gas Case, 238 U. S. 153;

Denver Union Water Co. Case, 246 U. S. 178;

Cudahy Packing Co. vs. Minnesota, 246 U. S. 450.

The Dent Act [40 Stat. 1272] Supports Claimant's Contention.

(B) That Congress, itself, appreciated that "just compensation" should properly include damages based on the difference between the cost of performance and the contract price, or anticipated profits as called by some, is evidenced by the entirely different provisions adopted by Congress in the Dent Act of February 2, 1919, (40 Stats. 1272). This act, as the court well knows, provided for the legalizing, adjusting and discharging of agreements, express or implied, "upon a fair and equitable basis" that were entered into prior to November 12, 1918, when such agreements had not been executed in the manner prescribed by law. In the event that settlement was not made by the Secretary of War, then the Court of Claims was given jurisdiction and was authorized to make an award of fair and just compensation, as specified in section 1 of the act. Section 1 of the act provides:

"Provided that in no case shall any award either by the Secretary of War or the Court of Claim, include prospective or possible profits on any part of the contracts beyond the goods and supplies delivered to and accepted by the United States and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said contract or order."

This phraseology is far different from the use of the terms "just compensation" in the Acts of

April 4, 1917, June 15, 1917, and July 1, 1918. Congress in legislating in regard to the amount of damages to which a contractor was entitled was not interpreting or confirming the terms "just compensation" in the former acts, it was specifically adopting in the Dent Act in very terms a new basis which it declared to be "a fair and equitable basis" and in adopting this rule, it departed from the language of the former acts, clearly indicating that without the specific language excluding from consideration anticipated profits, that the language of the former acts, to-wit: "just compensation" would require the inclusion of anticipated profits and the adoption of the legal rule of damages based on the difference between the cost of performance of a contract and the contract price.

Some authorities have been cited above sustaining this rule of construction.

The courts indicate that statutes in *pari materia* are to be considered as a whole in interpreting their respective provisions and that sometimes the language of a later statute may be interpretive of the provisions of an earlier statute and establish that the earlier statute was intended to cover certain matters that were interpreted as included by the later statute. These cases, however, do not apply where the later statute uses different language and different provisions. In such a case under rules of construction, the courts will draw the conclusion that the earlier statute was intend-

ed to include the matters which the latter statute excluded.

In *Montclair vs. Ramsdell*, 107 U. S. 147, the court said in its opinion at page 152:

“It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed. We should assume that the legislature was aware, when the Act of April 15, 1868, was passed, that a previous statute had expressly excepted Bloomfield Township from all of its provisions. When, therefore, they declared that the new township should come under the operation of *any* act from which Bloomfield had been specially excepted by any provision thereof, the established canons of statutory construction require us to presume that the legislature understood the full legal effect of such a declaration. The purpose, manifestly, was to relieve the new township from the disabilities imposed by the bonding act upon the township of Bloomfield as then established.”

In other words, it was clearly within the jurisdiction of Congress to provide in the Acts of March 4, 1917, June 15, 1917 and July 1, 1918, that in determining “just compensation” a settlement should be made upon an “equitable basis” and remuneration made merely for expenditures and obligations or liabilities incurred in performing or preparing to perform the contract or order and not to include prospective or possible profits on

any part of the contract beyond the goods and supplies delivered to and accepted by the United States. If such had been the intention of Congress it was easy to so provide and this litigation would never have occurred. It was equally easy for the Government, in the contract itself, to make provisions authorizing it to cancel the contract and to provide that in such an event anticipated profits would not be paid. In fact, as this court probably knows, most of the recent war contracts made by the War Department contained provisions substantially along these lines.

C. Assuming but not admitting that the statute of June 15, 1917, is applicable and that the construction of this court may be that the term "just compensation" does not include "anticipated profits," still, we contend that as a matter of law the Court of Claims erred in not including in its just compensation when fixing the same at \$495,250.34, the additional sum of \$96,041.50, being the profit that the claimant was in a position to make and could have made by the delivery of the 25 mounts in October and November, 1918, and prior to the cancellation of this contract, and which said mounts it would have delivered under the contract in this case, except for the changing of the schedule of deliveries as mutually agreed upon between the parties, as shown in the letters exchanged and set forth in detail in Finding of Fact IX (Fols. 184-185).

When contract 1498 was cancelled, it is clear that had the 25 gun mounts been applied on contract 1498, which really, in the first instance, belonged to that contract, the Navy officials would still have allowed contract 949 to have proceeded

to completion, and that the plaintiff would have fully carried out the same, as in fact it did

The application of the 25 gun mounts made in October and November, 1918, on contract 1498, would not have affected in any way the ability of the claimant to carry out contract 949.

This would have meant that the claimant would have received the profit to which it was entitled on the 25 gun mounts applicable to contract 1498, and would also have had the profits on the complete contract 949, as well as enjoying the advantage that would have come to it from spreading the overhead expense, etc., over an additional 25 mounts. The company certainly, in respect to contract 1498, is entitled to the profit that its books and records show it was in a position to earn on 25 gun mounts that it was in position to deliver and actually did deliver, although they were counted in the settlement as part of contract 949. To this measure of damages the claimant, we submit, is equitably and fairly entitled, not as anticipated profits, but for profits and services on work actually completed and done under its contract.

This is not a case of double profits on the same article but would give the claimants the right to profit under each contract, but on contract 1498 would only be allowing profit on the 25 mounts that it had in readiness and could have delivered

in October and November, 1918, without affecting its deliveries or ability to complete contract 949.

It will be remembered that the change in the schedule of deliveries was not brought about through any fault of the claimant, but was made necessary by reason of conditions beyond claimant's control, as pointed out in its letter of September 18, 1918, to the Navy Department (Fol. 184). In amending the schedule of deliveries, the handling of the records and manufacturing parts under both contracts were being simplified, and this would accrue to the Government's benefit, as pointed out in the same letter of the claimant, and as found by the Court of Claims in Finding of Fact IX, as follows, to wit:

"The plaintiff company manufactured and was able to deliver to the United States in the month of October, 1918, ten gun mounts under contract 1498, and manufactured and was able to deliver under said contract fifteen gun mounts in the month of November, 1918, and would have made such deliveries on said contract but for the consent of the United States to changed deliveries as set out in the above correspondence and to application of said ten and fifteen gun mounts on contract 949. Relying upon the consent of the United States to said amended schedule of deliveries said ten and fifteen gun mounts so manufactured in October and November, respectively, with all other mounts manufactured during those months, were delivered to the United States to apply on said contract 949." (p. 124).

We, therefore, submit that it is highly inequitable even under the most extreme interpretation of the words "just compensation" to penalize the plaintiff and deprive it of profits on the 25 mounts that it had actually made and had on hand at the time the Government cancelled its contract. But for the cancellation of the contract the claimant would have performed both contracts and would have secured, and been lawfully and equitably entitled, to its profits on both. We, therefore, respectfully submit that the Court of Claims erred in not including in its judgment of \$161,614.58, as the balance due the plaintiff, the further sum of \$96,041.50. We present this last proposition to the Court's consideration with considerable hesitation, since by so doing we do not mean to impair or limit the arguments made elsewhere in this brief that the claimant is clearly entitled to have its damages figured on the basis of the difference between the cost of performance and contract price, which would entitle it to have the judgment of the Court of Claims increased by the sum of \$726,120.15. In this event, the contention here made in regard to the damage sustained by the plaintiff on the 25 mounts, or the sum of \$96,041.50, would have no bearing as this last mentioned figure is included in the larger amount. We only raise this question in the event that this Court decides against our claims on every other ground and contention, and believe that in such an event there will be no reasonable ground for refusing to give claimant damages for its loss of

profits on 25 gun mounts that it had on hand ready for delivery at the time the Government cancelled the contract.

D. The claimant's position protects its lawful rights and still is equitable to the United States.

This Court will recognize the fact that the Navy's cancellation of this contract and refusal to take the gun mounts and sights covered thereby, unquestionably saved the Government a large amount of money even if the claimant receives in this case its damages based on the difference between the cost of performance of the contract and the contract price. If the claimant had completed all the guns and delivered them to the Government, it would have been paid the contract price, [nearly three times the amount of the claimant's damage now asked for] which would have, of course, included the money for the additional work, labor and other expenses necessary to the full performance of the contract. Its profit would have been the same as claimed in this case; still the Government might have been in possession of considerable useless material which it in all probability would have been required to sell or dispose of at an additional loss beyond the payment to the claimant of its contract price. The recent and enormous loss sustained in the sale of over \$300,000,000.00 of ships for \$750,000.00 by the Government, emphasizes the saving to the Government of not being required to take actual delivery of

the gun mounts and sights in the case under consideration, and, still, properly award compensation to the claimant for its loss and damages estimated and figured in accordance with the recognized rules of law.

The claimant, financed by Canadian capital and administered by those trained in war time manufacture, was formed solely for the purpose of carrying out these armament contracts with the United States. The corporation had no other business and abandoned its plant upon the finishing of its contracts.

We submit it would deprive the claimant of its lawful contract rights unless this court awards it compensation measured by the difference between the contract price and the cost of its full performance.

POINT IV.

The judgment of the Court of Claims should be reversed and the case remanded to the court with directions to amend its judgment so as to award and decree that the plaintiff-appellant is entitled to recover from the United States the sum of \$887,834.73, together with such other relief and judgment as may be just.

LYMAN M. BASS,
Attorney for Claimant-Appellant,
1330 Marine Trust Bldg.,
Buffalo, N. Y.

APPENDIX.

"EXHIBIT A."

EXTRACTS FROM CONGRESSIONAL
RECORD65th Congress, First Session
Volume 55, Part 3.

* * * * *

Page 2511.

"Mr. Nelson: * * * Mr. President, this bill contains some very unusual and far reaching provisions * * *. It authorizes the President—which of course in this case means the Shipping Board—(b) within the limits of amounts here; be authorized to modify, cancel or requisition, etc. It not only authorizes the Shipping Board to take possession of the ships which have been partially completed, to commandeer them, but it authorizes the Board to change and modify contracts which have been made between the ship builder and the man who has a ship in process of construction."

Page 2512.

"Mr. Underwood: * * * We rejected the general legislation which we were asked to consider, but incorporated in the bill appropriations that are really within our jurisdiction. Probably the only portion of this bill that was originally within our jurisdiction was the appropriation for the merchant marine or the carrying on the work of the Shipping Board.

Mr. Hardwick: Mr. President, I should like to suggest to the Senator, too, that in

times of war and for the purposes of war it is just as necessary to have a merchant marine for war purposes as it is to have a Navy, and that is the only thing we undertook to do."

Page 2513.

"Mr. Underwood: * * * We have to get the ships now building off the ways and operate the shipyards with three shifts in order to expedite the construction * * *. I want to say to Senators that, if this war is to be a success, the first question and the last question to be considered is ships, ships and more ships. We cannot start the war without ships and we cannot successfully conclude it without ships."

Page 2515.

"Mr. Calder: Can the Senator tell me what is to be the policy of our Government towards these ships that are under construction?"

Mr. Underwood: In regard to taking these ships?

Mr. Calder: Yes.

Mr. Underwood: I cannot speak by the card on that. I shall be glad to give the Senator such information as I have. I know that our Government wants to clear the ways of the ships that are on them—that is the most important question—so that they can be used. Most of these contracts have been made on an 8-hour basis, with one shift a day. Our Government wants to put the work on a two or three shift basis so that we will expedite the building of the ships and make as great a use of the ways as possible. This bill provides for expediting the building of these ships. My information is, although I do not speak with any authority, that those ships that are nearing completion will be allowed to be completed

in their usual course, and go to the corporations or men or countries that have already contracted for them. But ships that are just beginning and may occupy the ways for a considerable time, will probably be commandeered under this bill, in order that the Government may handle those ships, expedite them as rapidly as possible, and clear the ways to put their shipping in.

* * * * *

Mr. Underwood: From the evidence before the Committee, I do not think that power will be used. From the evidence that came before the Committee, I think it is clear that General Goethals intended to build these ships by way of contract with the usual method but he wants the power to accomplish the results if he can not do it the other way."

Page 2515.

"Mr. Underwood: They will not be interfered with if they are nearing completion. I will say to the Senator that my understanding is, from the testimony given before the committee, that most of these ships that are on the ways belonging to foreign nations are really for the Government of Great Britain, although the contract is not made in the name of the Cunard Co. There may be some few ships of foreign nations. If they are nearing completion, my understanding is that it is not the purpose of this Government to interfere with the contracts; but if they are not, and we have got to get the yards for the purpose of expediting matters, the contract will probably be taken over."

Page 2516.

"Mr. Weeks: Let me ask the Senator if all the shipyards in the United States are now working at full capacity?"

Mr. Underwood: Our information is that they are not. That they are working at full capacity on a single shift, an 8-hours a day shift; but what our Government wants to do is to make them work on two or three shifts a day."

Page 2518.

"* * * Mr. President, there is no danger in conferring the powers described in the shipping clauses of this bill. There is no danger except to the United States, if they be withheld. The power, in my judgment, will never be used to its maximum extent. I doubt whether it will ever be drawn upon largely at all, because when you come to analyze it, it is only after all the power of the Government to utilize the facilities of the shipyards of the country and of those enterprises which produce iron, steel, and other materials that go into the construction of ships, so that the Government may be served promptly and effectively."

"I doubt, sir, whether it will ever be necessary for the President of the United States to commandeer any shipyard, any rolling mill, any steel works, or any other factory in the United States to expedite this work, but it is a good thing in the event of the unforeseen happening that he shall have that power."

Page 2524.

"Mr. Stone: Why could not the foreign government pay the money as well as our government to expedite the construction?"

Mr. Hardwick: It can and it ought to and it is the intention of this section that it shall. It was merely intended, as we amended it in the Committee, to expend these funds to ex-

pedite the construction of these vessels. * * We did not think and we do not believe the Senate will think, or Congress will think, that we ought to take this tremendous power to commandeer men and material and factories and put it at the disposal of any foreign government or any subject or citizen of a foreign government. We were willing to confer it for the construction of American ships, but not for the construction of British ships, whether owned by the British Government or by a British corporation. * * I do not think they ought to use it except in those cases where it is impossible by the mere use of money alone to so speed up British construction as to meet the demands and the requirements and necessities of the hour. If there are such cases where money alone will not accomplish it, then we ought to take them over no matter what government owns the contracts or what firms or corporations are interested in them."

Page 2525.

"Mr. Underwood: * * * * As everybody knows, the private owners of ships to-day are not anxious to sell their ships, notwithstanding the danger of submarine warfare. In fact, we have to put provisions into this bill conferring the right to commandeer in order that we may be sure of getting the ships."

Page 2525.

"Mr. Smoot: Does the Senator really believe that if the President of the United States should ask England to expedite the building of these ships, England would not do it?"

Mr. Underwood: Well, I have no doubt of England's doing it, but there are private con-

tracts which exist between the shipbuilding companies of this country and the Cunard Steamship Line. When General Goethals tells us that it is of the utmost importance that he be given this power, I do not think he wants the power simply for the purpose of trying to coerce the British Government, when he says that the British Government is prepared and ready to cooperate with him in this respect. There is something else behind it, and there is something else behind the fact that we have to fight here to get the power to commandeer these ships."

Page 2527.

Mr. Martin: * * * I trust that the Senate will vote down the amendment that is offered by the Senator from Utah, the object of which is to take away from General Goethals the discretion which the bill as reported gives him, to take over these ships if he thinks it well to do so. He says he will not take over those that are nearly completed, but those that have a long distant date for delivery he wants to take over, because he wants the ways. He not only wants these ships quickly constructed by expediting their construction, so that we may have the use of them, but he wants to put more ships on those ways."

Page 2527.

"Mr. Kellogg: Mr. President, I shall take only a moment of the Senate's time.

We are here making an appropriation of \$750,000,000. We are proposing to give the President the right to commandeer the shipyards of this country and the ships being built by private individuals, and I cannot see why

we should hamper this program by excluding the ships contracted for by Great Britain. If we are going to make any such appropriation as that—and we are going to do it—and grant these powers, it seems to me we had better not hamper the administration with any restrictions as to what ships, of what governments, we shall take over.”

Page 2527.

“Mr. Phelan: Mr. President, I do not intend to delay the Senate, but as a matter of information I am in position to communicate a fact. I learned today, and have already made representations to the State Department on the subject, that on May 15 the British Government instructed its brokers not to allow the transfer of neutral ships or charter parties to any ownership but British ownership. An American firm had entered into negotiations a week ago, the terms were satisfactory, the neutral owners desired to sell, the negotiations having been delayed for an unreasonable time, the American merchant inquired by cable and learned that on May 15 the British Government had forbidden the transfer of neutral ships or charter parties to American owners * *. Having in view not only the exigency of the moment, but ultimately the supremacy of our ships upon the seas, I think it is a matter of great importance that we should adopt the Committee’s recommendation, which is also the recommendation of the President.”

Page 2529.

“Mr. Underwood: * *. The Committee’s bill is perfectly fair as it is written. It provides that any ship that is commandeered or

any shipyard or anything else that is commandeered shall be paid for at a reasonable price to be agreed on between the President or those acting for him, and the owner. * *

Mr. Weeks: I wish the Senator to remember that we are commandeering property.

Mr. Underwood: Undoubtedly."

Page 3015.

"After introducing the bill, which had been amended in conference, Mr. Fitzgerald stated:

"* * The proposed amendment which the House is asked to adopt is simply the rearranging the Senate Amendment in more logical form and differs from it in four principal respects: first, it gives power to suspend contracts as well as to cancel, modify or requisition. In the Senate provision there was no authority to suspend a contract between private parties, which might interfere with the Government requisitioning or requiring work to be done."

Page 3015.

"Mr. Fitzgerald: * * This legislation is of a very radical, unique and unusual character. It confers the most comprehensive powers ever proposed upon the President of the United States. It authorizes him to requisition the entire output of a factory, a portion of a factory, to take over ships, to cancel contracts, to assume contracts, to suspend contracts, to operate these ships, and when the powers given here are exercised, provision is made to make just compensation for the taking over."

Page 3015.

"Mr. Fitzgerald: * * * Under the Senate amendment the President is authorized to delegate all of those powers of a radical and comprehensive character to the general manager of the United States Shipping Board Emergency Fleet Corporation. That is a corporation organized by the Shipping Board under the authority conferred by the shipping act for the purpose of having constructed ships deemed essential at this time."

Page 3016.

"Mr. Fitzgerald: They expect to get all of the trained mechanical help needed, and if necessary under this bill, the President will have the power to suspend contracts where labor is utilized that can be utilized in ship-building, in order to get that labor diverted to the shipping work. That is one of the purposes of authorizing the suspension of contracts."

Page 3019.

"Mr. Fitzgerald: * * A paragraph was inserted in the Senate Amendment, the purpose of which was to enable the Navy Department to requisition, to commandeer ships, that are essential for certain purposes connected with the Navy. There is no such power now. In the rearrangement of this Amendment, that power is retained and the authority of the President to delegate this power or exercise it through such agency or agencies as he may determine proper is intended to permit him to exercise that part of the power intended for the Navy through the Navy Department, and provision is also made that if any vessels are commandeered under this

1
2
3

power for the Navy Department or for the War Department, payment, etc. * * There are a great many other questions for which provision must be made; questions of very great importance. The Committee on Appropriations when it was confronted with the question of considering the Senate Amendment determined that the only authority it would include in the bill was that authority necessary to enable the ships to be secured rapidly with the commandeering powers, and that if further legislation would be necessary, other very important questions ought to be left to consideration in a bill that should not come from the Committee on Appropriations."

Page 3022.

"Mr. Smith: Suppose a steel company is now manufacturing steel for some purpose that is not in connection with the war, and not for the purpose of carrying on the war, and suppose the Government wants to cancel contracts of that character and take the steel for ships or to build cars, should not the Government have the right to cancel those contracts?"

Mr. Lenroot: Absolutely, and that far I am not making the slightest objection.

Mr. Smith: Does this do more than that?

Mr. Lenroot: Yes, it does. For instance, a building is being erected in my town, the contractor owns the material, the Government desire not a pound of that material, but under this power it can suspend the erection of that building in my city, or your city, for the sole purpose of driving those men out of employment and seeking to compel them voluntarily to seek employment elsewhere."

Page 3024.

"Mr. Sherley: * * What the Committee had undertaken to do is to give to the President the powers that may be necessary in order to quickly build ships, for at the present time there is no matter so important for the successful termination of the war, as the supplying of tonnage as far as it can possibly be supplied for the transportation of food, of men and of munitions across the ocean, and it is a brave man who would want to stand in the way of the powers that may be necessary for that purpose. It may be desirable to modify paragraph (b) by substituting the word 'necessary' for the word 'utilized', found in the last part of the paragraph, so that it would read: '(b). To modify, cancel, requisition or suspend the performance of any contract now in force or hereafter made for the building, production or purchase of ships or material or any contract now existing or hereafter made for any purpose, which requires in the execution thereof labor or material that may be necessary for shipbuilding.' The only effect of that would be to make further evident and apparent that the purpose of taking over or suspending or modifying a contract is because the performance of that contract necessarily interferes with the doing of something, in this instance the building of ships necessary for the prosecution of the war."

Page 3024.

"Mr. Dempsey: Now, I say that is not a reasonable construction of this statute, and that the primary rule of construction always is that it shall be reasonable, and I say, moreover, that it not only is not a reasonable construction of the contract, but, I say, it is not

in accord with the language which is actually used. (The language of paragraph (b) is then repeated). Now, you grant power to modify or suspend any contract which requires labor or materials. What kind of labor or materials. That which may be utilized for shipbuilding. * * * Now, what that means, and what any court in the world would construe it to mean is simply this, that if a plant is using material and labor for some other purpose and that plant and that labor may be utilized for shipbuilding, then the President under this section would have the right instead of allowing them to complete the labor which they have in hand, and which is not useful for this great purpose which the Nation has in view, to go in and say, 'We will utilize this labor and this material and instead of building a store or a house, we will use it for the purpose of shipbuilding.' That is all it means."

No. 485.

FILED
MAR 5 1923

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.

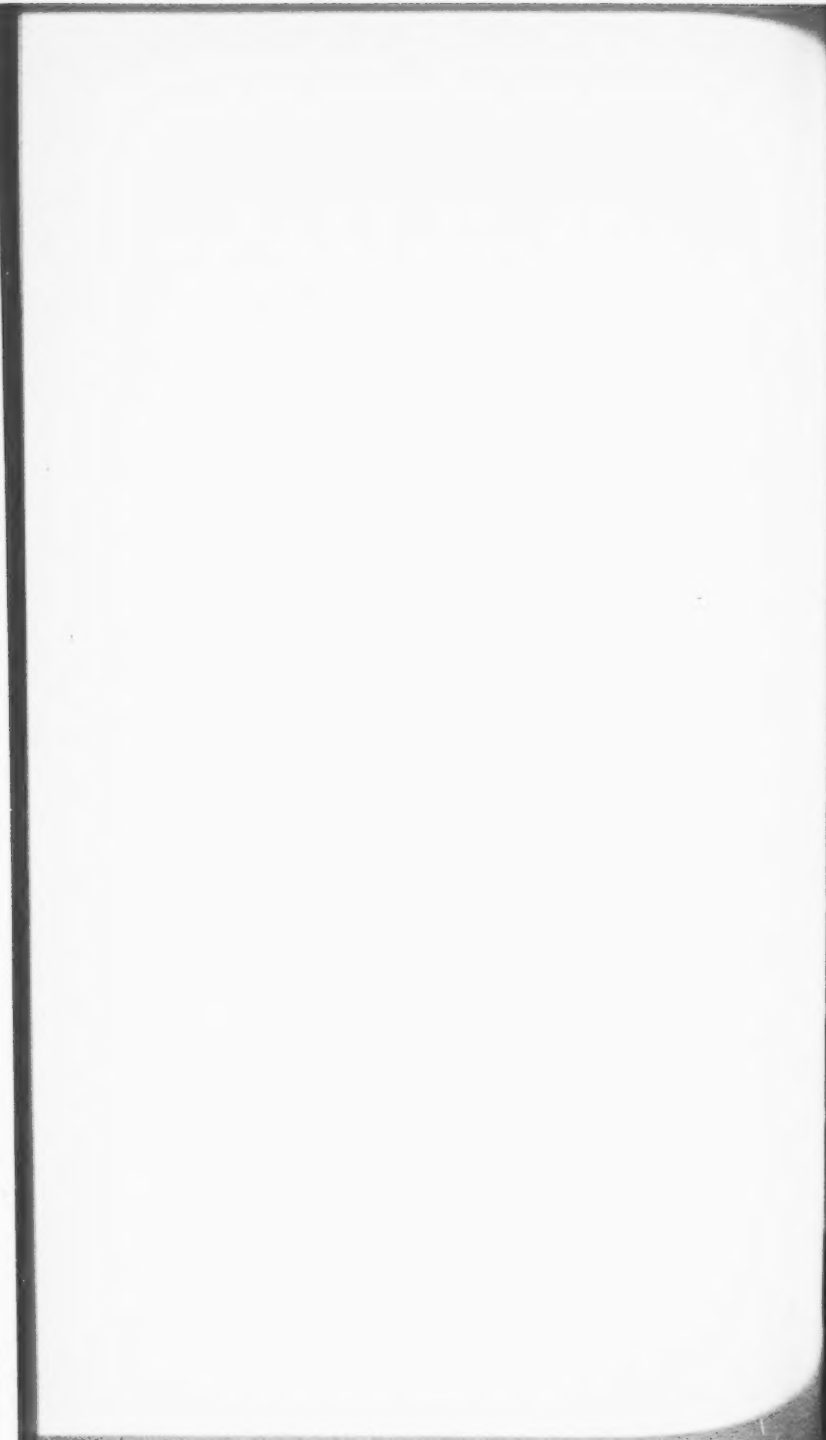
RUSSELL MOTOR CAR COMPANY,
Appellant,
vs.

UNITED STATES,
Respondent.

BRIEF OF AMICUS CURIAE.

LOUIS TITUS,
Amicus Curiae.

Westory Building,
Washington, D. C.



No. 485.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

RUSSELL MOTOR CAR COMPANY,

Appellant,

vs.

UNITED STATES,

Respondent.

BRIEF OF AMICUS CURIAE.

The plaintiff in the court below, the appellant here, entered into a written contract May, 1918, with the United States, to furnish certain gun mounts to the United States. The contract was made for the United States by the Acting Secretary of the Navy. In November, 1918, this contract was cancelled by the Secretary of the Navy.

The plaintiff, after some negotiations, brought this suit against the United States, claiming damages on account of such cancellation, including in such damages a claim for anticipated profits.

The Respondent contends that this cancellation was authorized by the Act of June 15, 1917. It is of course well established law that where the United States cancels its own contract, without default on the part of the other party, the United States in such case is liable for the full amount of damages sustained, including anticipated profits, where such profits are a matter of reasonable certainty and properly proven. In other words, the liability of the United States in such a case is exactly the same as would be the liability of an individual under like circumstances.

United States vs. Purcell Envelope Co., 249
U. S. 313 and cases therein cited.

I do not pursue this matter further or cite further authorities because I understand that it is conceded that such is the law and that this general principle of law would be applicable to this case were it not for the provisions of the Act above mentioned. The sole defense to this action is that the provisions of this Act authorize the Government to cancel its own contracts and therefore the effect is the same as if there were written into the contract itself a clause permitting such cancellation.

ACT OF JUNE 15, 1917.

The Act of June 15, 1917, was an act making appropriations for military and naval purposes. The provisions relied upon by the Respondent are found under the sub-head, "Emergency Shipping Fund." The portions of the Act applicable to this case are as follows:

“Emergency Shipping Fund.”

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * *

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions

hereof, it shall make just compensation therefor, to be determined by the President, etc.

* * * * *

The President may exercise the power and authority hereby vested in him and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time.

* * * * *

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire."

PROPOSITION I.

The word cancel as used in this law does not apply to Government contracts, but applies exclusively to private contracts.

In determining whether subdivision "b" of the Emergency Shipping Fund paragraph of this Act authorizes the President to cancel Government contracts as well as private contracts, the situation of the country at the time the law was passed must be taken into consideration. The United States had just entered the great war. Ships were one of the first essentials to the successful prosecution of that war. The shipyards of this country were at that time filled with ships being constructed for foreign nations or the citizens of foreign nations. Many of such ships were being constructed for nations who were neutrals in the war. It was obviously desirable that the Government should have in the words of the statute power to "modify, suspend, cancel or requisition" such contracts, and to have the same power as to future contracts, if any such

contracts should be thereafter made. All of these powers were manifestly given for the purpose of expediting the construction of ships for the United States. It might be desirable to "requisition" some contracts and take them over for the United States. It might be desirable to "cancel" some contracts entirely, and thus clear the ways for the construction of ships for the United States. It might be desirable in the case of some contracts to "suspend" them during the time that the United States should make use of the plant. And it might be desirable in other cases to merely "modify" the contracts either as to the number of ships, the amount of material, the time of delivery, or as to some other feature, but any and all such modifications to serve the paramount necessity of the United States to secure ships. The sole purpose of Congress when this Act was passed was to get ships and to devise ways and means of getting them. Congress was not then thinking of a way to get rid of ships nor of a way to get rid of contracts for ships, nor of a way to save money by getting rid of such contracts. But it was thinking of the great necessity of getting ships and the necessity of granting the President all the power that could be advantageous for such purpose.

These powers which Congress granted are found in an *appropriation* bill. The law is entitled "An Act making appropriation to supply urgent deficiencies in appropriations for military and naval establishment," etc.

The Emergency Shipping Fund provision starts out with an authorization to the President to do certain things. With some condensation, it is as follows:

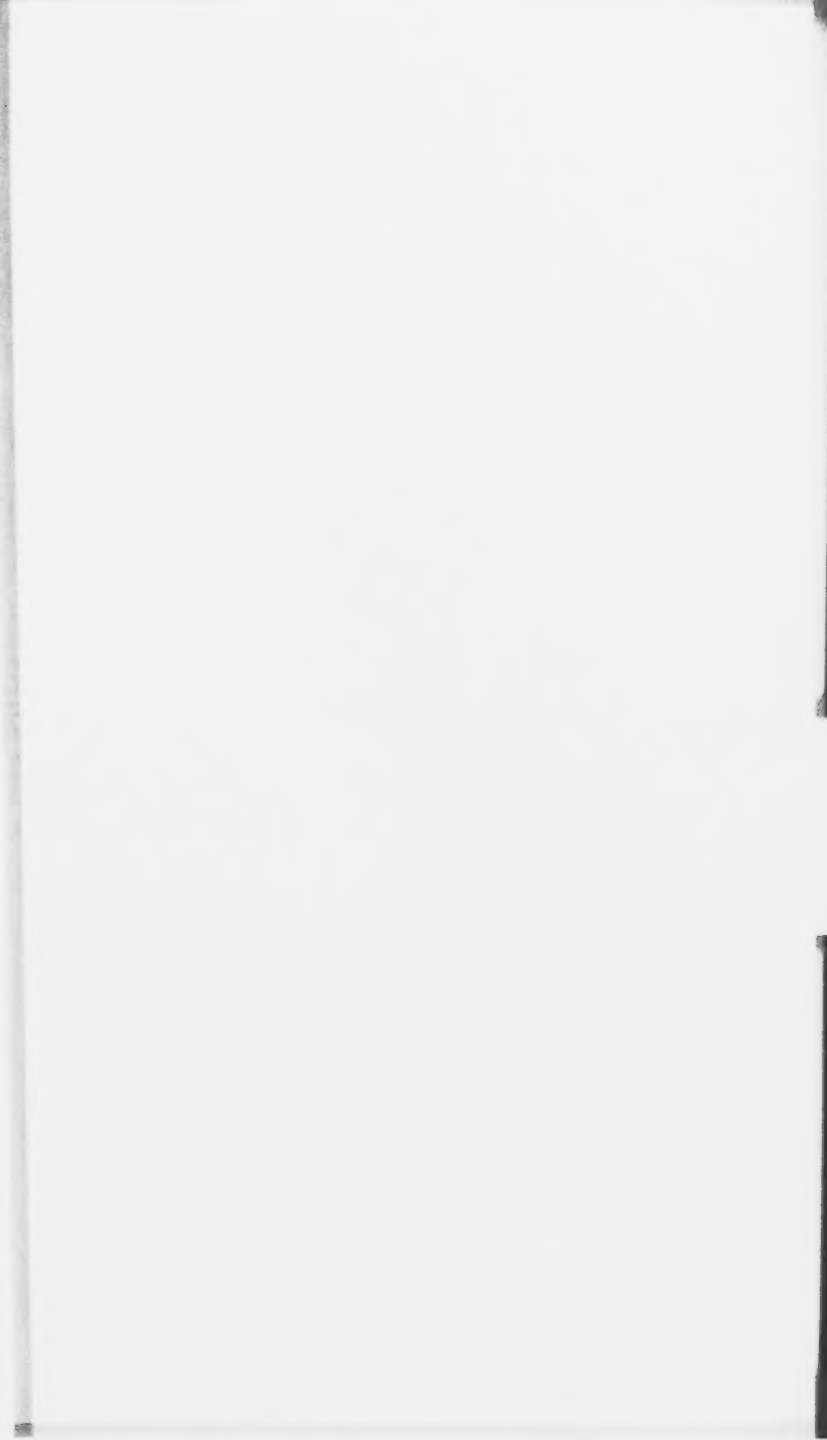
"The President is hereby authorized and empow-

ered, *within the limits of the amounts herein authorized* (italics ours),

- (a) To place an order for ships or material.
- (b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production or purchase of ships or material.
- (c) To require the owner of any shipbuilding plant to place the output of such plant at the disposal of the United States.
- (d) To requisition, for the use of the United States, any plant.
- (e) To purchase, requisition or take over any ship or charter of such ship.

These constitute the sum total of what the President is authorized to do. It will be noted, first, that the authorizations are in an appropriation bill. It will also be noted that the President is only authorized to do these various things "within the limits of the amounts herein authorized." Apparently Congress was of the opinion that the exercise by the President of any of the powers granted would require money. If he placed an order for ships it would require money. If he took over the output of a plant it would require money. If he took over a ship or charter it would require money, and likewise if he modified, suspended, cancelled or requisitioned any contract it would also require money. It must therefore be apparent that the contracts which he was authorized to cancel were not contracts which the government had made but were contracts made by other persons, because to cancel a government contract would not require further money but would save the government money. Otherwise, there would be no object in cancelling the contract.

The debates and discussions in Congress, so convincingly set forth in the other briefs on file herein, show conclusively that Congress had in mind that it was private contracts that were to be "modified, suspended, cancelled or requisitioned."



The purpose, of course, in cancelling any government contract is to save the government the expenditure of the money required by the contract. It would seem positively absurd for Congress to appropriate money to enable the Government to cancel its own contract; but the appropriation of money was necessary if the contracts to be cancelled were private contracts. So then, Congress, contemplating that the cancelling of a contract would require money, made an appropriation for that purpose and provided further on in the Act that:

“Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter or material in accordance with the provisions hereof, it shall make just compensation therefor, etc.”

Notwithstanding this manifest interpretation of the law, the Court of Claims has decided that the word “cancel” applies to Government contracts, basing its opinion in this respect on two arguments:—

1st. The word “modify” used in subdivision “b” of the Emergency Shipping Fund provision, must necessarily apply to Government contracts, and it is therefore reasonable to assume that Congress intended the word “cancel,” used in the same subdivision, also to apply to Government contracts.

2nd. As the power to cancel contracts extended for six months after final peace, the power to cancel must apply to Government contracts as there could be no object in canceling private contracts after final peace.

Answering these two contentions in their order:

1st. The word "modify" is applicable to private contracts.

The Court of Claims argues that the authority to modify could only apply to Government contracts because if applied to a private contract there would be no contract left and moreover no government purpose could be served by modifying a private contract. This is obviously false reasoning. Suppose, for example, a shipyard had a contract for ten ships that could only be used in inland waters and were not ocean going ships. Suppose further that five of these ships were almost completed and five not commenced. Who can doubt that the President under this power could modify this contract, allowing the first five ships to be finished and eliminating the remaining five from the contract?

Take another example, suppose a ship is being constructed in an American yard for an American citizen. The Government does not, we will say, desire to requisition the ship itself nor the contract for the ship, but desires to requisition the use of the ship after its completion. (Which, incidentally, is exactly what the Government did in many cases.) The date of delivery, however, fixed in the contract does not suit the Government. It desires an earlier delivery, and feeling convinced that it is possible for the yard to expedite the work, it modifies the contract by ordering an earlier delivery. Can there be any question that under this law the President would have authority to "modify" the contract in that respect. Of course if it cost the yard any money to advance the delivery, the Government must pay the bill, because the same law also provides that whenever the Government shall modify

or cancel a contract it must make "just compensation therefor." But the point is, that in the cases cited and others that will readily occur to the mind, the Government might well and with an easily understood purpose modify a private contract, although the Court of Claims says that the "Power and the purpose (to modify a private contract) are beyond conception."

It must be borne in mind further that the contract itself provides in elaborate detail for its own modification and the limits beyond which such modification can not go. If the theory of the Respondent is correct and this law allows the modification of Government contracts, then the provisions of this contract limiting the right to modify are illegal. Neither the appellant nor the Government understood that this section authorizing the modification or cancellation of contracts applied to Government contracts, for had they so understood, it would have been idle to have said anything at all about modification, and most certainly they would not have limited the right to modify in the teeth of a law permitting unlimited modification.

Let us examine this proposition a moment and see where it lead us. There is no limit placed upon the word "modify" in the statute. If the Government under this law can modify its own contract, then it can modify it in any and every respect. Consider for example a contract for the construction of ships. The contract is negotiated with great care as to the number of ships, the kind of ships, the size, the speed, the dates of completion and the price. If the President has a right to modify under this law then none of these carefully drawn provisions mean anything at all. The very next day without consulting the contractor, the President can reduce or increase the number of ships.

He can change a freight ship to a passenger ship, a passenger ship to an oil tanker, or a tanker to a collier. He can change a slow boat to a fast one, or a fast boat to a slow one. He can advance or retard the dates of delivery and finally he can reduce the price or advance it at will. In other words if the contention of the Court of Claims is correct and the word "modify" applies to Government contracts then all such contracts say this, that the contractor will build any kind of a ship, of any capacity, of any speed, of any design, deliver them at any time and accept any terms of payment and any price that the President may determine. Moreover one modification does not end the matter, the President can go on modifying from day to day. He can reduce the price this month and still further reduce it next month. No contractor outside of a home for feeble minded could be induced to sign such a contract. It is bad enough to apply the right to cancel to Government contracts, but it is infinitely worse to so apply the right to modify. In the case of cancellation the contractor at least knows his status, for when a contract is cancelled, it is cancelled and there is an end to the matter. But when a contract is modified it is still subject to further and never ending modifications. Writing into a Government contract the right to cancel would be bad enough, but writing into it the right to modify would be disastrous.

It is manifest that the Court of Claims' contention that the word "modify" must apply solely to Government contracts is a misconception of the law, and that the only reasonable interpretation is that it applies solely to private contracts.

2nd. Six months' extension of powers after peace does not imply that word "cancel" applies to Government contracts.

The Court of Claims further argues that the word "cancel" must apply to Government contracts because the power to cancel was to continue for a period of six months after a final treaty of peace; and that there could be no object after peace in cancelling private contracts, because the war would then be over and the necessity for ships gone. With equal force, it could be argued that the power to build ships, to contract for ships and material, to requisition ships and ship yards, should have ceased with the war as the necessity was gone. Yet Congress saw fit to extend all these powers for a period of six months after final treaty of peace. May it not well be that Congress realizing the United States would have millions of men and vast stores of material in Europe, thought there might still be necessity even after peace to bring back these men and material and that ships might be necessary for that purpose? Suppose for example, that some ship particularly desirable for such purpose, after final treaty of peace, was still being constructed for a private company; it is not beyond the bounds of reason that the United States should wish to cancel the contract for such ship and take it over for its own purposes. Whatever Congress may have had in mind, there certainly is no force in the argument that because the power to cancel was extended for six months therefore the word "cancel" must apply to Government contracts. Congress was apparently of opinion that all the powers involving the entire shipbuilding program should be extended beyond the period of peace

and so provided. The authority to build ships, to take over plants, to requisition charters, and likewise to cancel contracts, were all equally and without distinction extended beyond the peace treaty.

PROPOSITION II.

Assuming that the Act of June 15, 1917, gave the President power to cancel Government contracts, then the President never delegated such authority.

The President who signed this law and who is a part of the law making power, evidently did not understand that these words "modify, suspend, cancel," applied to Government contracts. It is hardly to be presumed that the President, with the great duties and responsibilities, which the war entailed, resting upon his shoulders, intended to examine contracts to determine whether they should be canceled or suspended. It cannot be possible that he expected to do this personally, and therefore he delegated, or at least attempted to delegate, all the powers received by him to various agencies. A portion he delegated to the Emergency Fleet Corporation, a portion to the Shipping Board, and a portion to the Secretary of the Navy.

On July 11, 1917, the President issued an executive order, delegating certain of his powers under this Act to the Emergency Fleet Corporation. The portion of this executive order which is material to this case is as follows:—

"I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to *and in furtherance of* the construction

of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels and the completion thereof, and all power and authority applicable to and *in furtherance* of the production, purchase and requisitioning of materials for ship construction." (Italics ours.)

On August 21, 1917, the President made an almost identical order delegating certain of his powers to the Secretary of the Navy. A reading of these orders discloses that the powers delegated were those in *furtherance* of ship construction, in *furtherance* of purchase or requisitioning of vessels, in *furtherance* of contracts for construction of vessels and the completion thereof, and in *furtherance* of the production, purchase and requisitioning of material for ship construction and war material. As the power of cancellation of a government contract cannot possibly be in *furtherance* of any of these things, it is evident that if the Act of June 15, 1917, was intended to give authority to the President to cancel government contracts, then the President never delegated such authority to anyone, but reserved it to himself. The cancellation in this case was made by the Secretary of the Navy, and in the Freygang case heard with this case, the cancellation was made by the Emergency Fleet Corporation. There is nothing in the order of cancellation to indicate or suggest that it was made under delegated power from the President. The result then is this, that even if the law did give to the President power to cancel government contracts, the Secretary of the Navy never received such power from the President, and therefore the cancellation was an unlawful one. This omission by

the President to delegate this authority, shows that he, himself a part of the lawmaking power, did not consider that the law gave him any such authority; otherwise he would have delegated that authority to some agency, it being quite inconceivable that he would himself have expected to examine thousands of contracts to determine whether or not they should be cancelled.

If it is possible to conceive of a case where the cancellation of a Government contract would be in *furtherance* of ship or material construction, then, it might be argued, that in such case the power to cancel was delegated; but that argument can not apply to this case, where the cancelation was merely to get rid of the contract and not to get it out of the way in order to substitute other contracts for other war material.

It may be argued that the power to cancel Government contracts under some circumstances was essentially for the prosecution of the war, and really in furtherance of ship or material construction. A Government contract might be for material, which, during the progress of the war had been demonstrated to be of little or no value, and some other kind of material might be substituted, which would be of greater value for war purposes. Under such circumstances, it might be necessary for the Government to cancel its own contracts in order to get such contracts for more or less useless material out of the way, and to make room for new contracts for different and more useful material. The answer to this is that the Government, without any special power, can always cancel its own contract, with the liability, of course, to pay whatever loss is sustained by reason of such cancellation. And, further, if this power be held to apply to Government contracts under the circumstances above outlined, it

cannot be held to apply to the cancellation in this case, which cancellation was not in furtherance of the war, nor in furtherance of the production of materials; was not to get rid of useless material in order to substitute more useful material; but was purely a cancellation to get the contract itself out of the way, without the substitution of anything in its place. This cancellation was made, not with any pretense that the material was not useful or that it was not the kind which the Government wanted for war purposes or that such cancellation would be in furtherance of the production of material, but was made solely to stop production entirely and to eliminate the contract completely.

We submit that these words "modify, cancel, suspend" have no application to government contracts, but apply exclusively to private contracts.

PROPOSITION III.

Assuming that the word "cancel" applies to Government as well as to private contracts, then the "just compensation" to which appellant is entitled includes anticipated profits.

The decision of the Court of Claims is based upon two propositions:

First: That portion of the law authorizing cancellation applies to government contracts.

Second: As such law does apply to government contracts, the effect is the same as if there were written in the contract a clause permitting cancellation, and therefore all question of anticipated profit is eliminated.

The vice of this argument is that it entirely overlooks the further provision of the same law to the effect that when the Government does cancel a contract it shall make "just compensation" therefor. "Just compensation" is not a new term. It appears in the Constitution itself and has been defined over and over again by this Court. And as so defined, it means a full and perfect equivalent for whatever has been taken away.

In *Monongahela Navigation Co. vs. United States*, 148 U. S. 312—the Court said:

"The noun 'compensation' standing by itself, carries the idea of an equivalent. Thus we speak of damages by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being the equivalent for the injury done, and the latter imposed by way of punishment. So that if the adjective 'just' had been omitted, and the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation should be the equivalent of the property. And this is made emphatic by the adjective 'just.' There can, in view of the combination of those two words, be no doubt that the compensation must be a *full and perfect equivalent* for the property taken." (Italics ours.)

And again—

"How shall just compensation for this lock and dam be determined? What does the full equivalent therefor demand? The value of property, generally speaking, is determined by its productiveness—the *profits* which its use brings to the owner." (Italics ours.)

And further on—

“But this franchise goes with the property; and the Navigation Company, which owned it, is deprived of it. The Government takes it away from the company, whatever use it may make of it; and the question of just compensation is not determined by the value to the Government which takes but the value to the individual from whom the property is taken; and when by the taking of the tangible property the owner is actually deprived of the franchise to collect tolls, just compensation requires payment, not merely of the value of the tangible property itself, but also of that of the franchise of which he is deprived.”

The phrase “just compensation” is spoken of as follows by the Circuit Court of Appeals for the First Circuit, in *United States vs. Town of Nahant*, 153 Fed. 520:

“The paramount law intends that the owner shall be put *in as good condition pecuniarily* by a just compensation as he would have been if the property had not been taken.” (Italics ours.)

In *United States vs. Rogers, et al.*, 257 Fed. 396, the Court said:

“The duty and obligation to make just compensation in such a case is fundamental, and whatever is an essential element in that compensation cannot be excluded, even by legislative enactment. The question of compensation is a judicial one. (*Monongahela Navigation Co. vs. United States*, 148 U. S. 312, 327, 13 Sup. Ct. 622, 37 L. Ed. 463.) (63.)

Just compensation rests on equitable principles, and it means substantially that the owner should

be put in as good position pecuniarily as he would have been if his property had not been taken."

There can be no doubt that in any ordinary case where the Government cancels its own contract, the compensation it must make includes anticipated profits.

United States vs. Purcell Envelope Co., 249
U. S. 313.

Now, this very law which, it is contended, permits the cancellation of a government contract, provides that in case of such cancellation *just compensation* shall be made. As before pointed out, these words are well defined. There is nothing ambiguous or uncertain about them; they have a certain, definite, court determined meaning, and it must be presumed that it was with this meaning in view that Congress used them. There can be no question that if the Government cancelled a private contract under this law it would be required to pay all damages sustained, including anticipated profits. This is admitted, but it is contended that in the case of cancellation of a government contract, the words "just compensation" have a different meaning and in that case do not include anticipated profits. There is no evidence in the law of any intent to give the words a different meaning in the one case than in the other. If the law applies at all to government contracts, then no distinction is made between government contracts and private contracts. If this clause is applicable to government contracts, then the law says that the government may cancel either a private contract or a government

contract, but in either case it must make "just compensation." There is no division or separation or distinction of any kind. It is all in the one sentence and in one clause. The words "just compensation" are only used once and are applicable to both kinds of contracts. How, then, can it be seriously contended that the words mean one thing if applied to one kind of contract but an entirely different thing if applied to another kind of contract?

"Just compensation" means that the person who has anything taken from him must receive a full and "perfect equivalent" for what has been taken. He must be put in "as good a position" as he was before. So that when the law says the government may cancel its contract but if it does it must make just compensation, it is exactly as if it said: The government may cancel its contract, but if it does it must give a full and perfect equivalent and must put the party in just as good a position as he would have been if the contract had not been cancelled. If the contract had not been cancelled, the appellant would have made his profit. Therefore, to put him in as good a position as he would have been, had the contract not been canceled, he must be allowed his profit.

It is submitted:

First: That this law authorizing the President to cancel contracts does not apply to government contracts.

Second: That if it does so apply, the authority to cancel Government contracts was never delegated by the President and therefore the cancellation by the Emergency Fleet Corporation was without authority and wrongful.

Third: If it does so apply, and the government can-

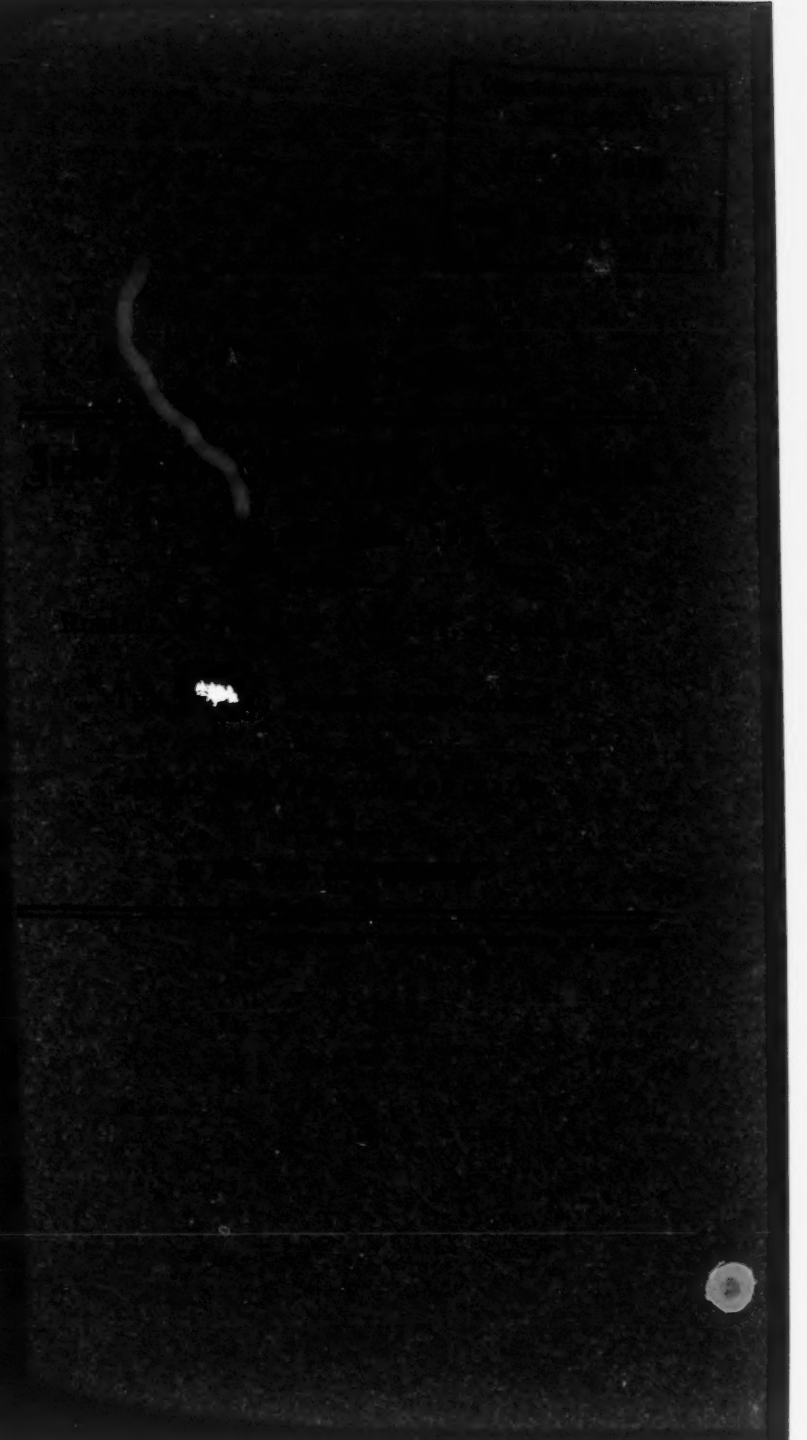
celled its own contract, just compensation must be made.

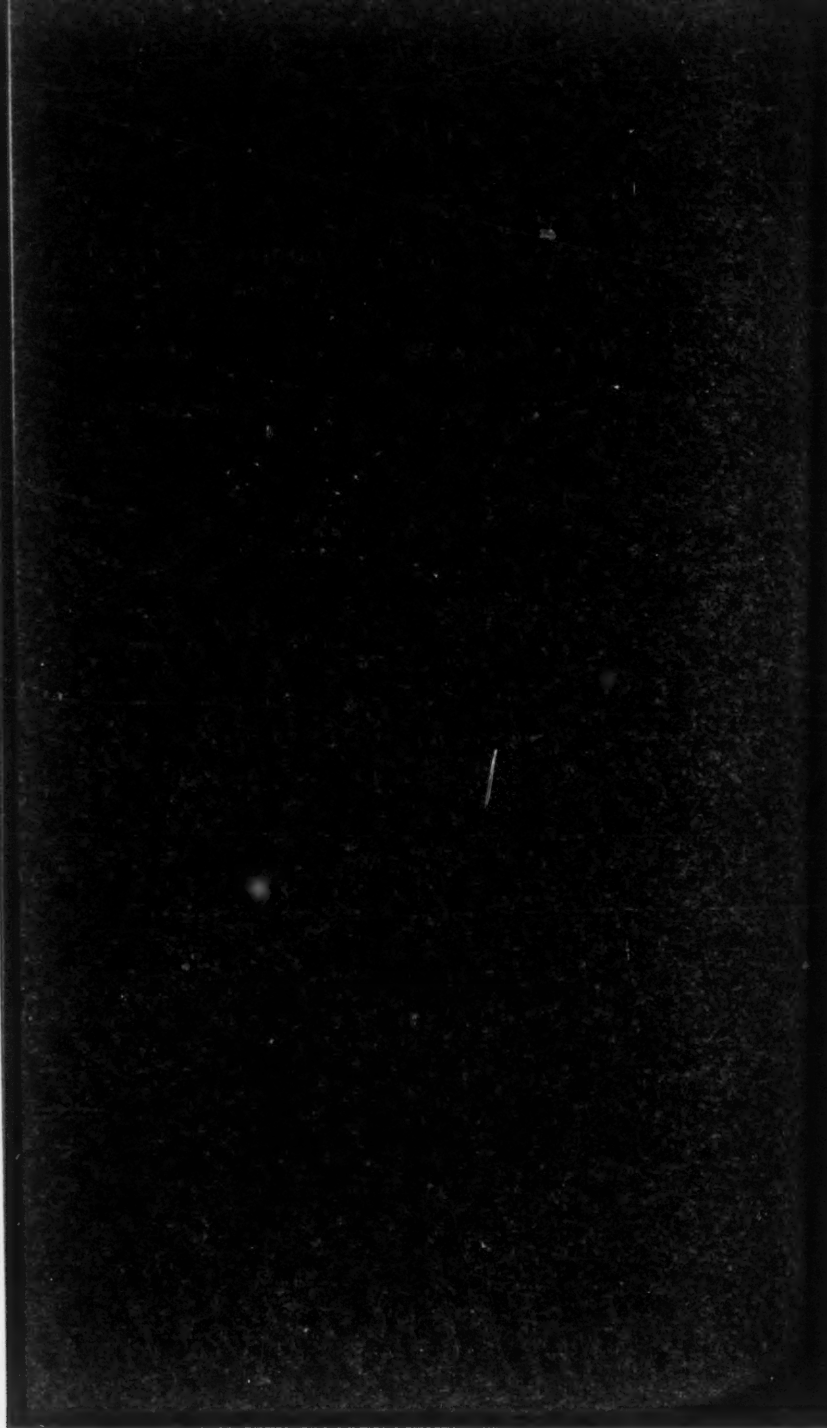
Fourth: In any case, anticipated profits must be allowed.

Respectfully submitted,

LOUIS TITUS,
Amicus Curiae.







In the Supreme Court of the United States.

OCTOBER TERM, 1918.

RUSSELL MOTOR CAR COMPANY, APPELLANT	} No. 485.
v.	
THE UNITED STATES, RESPONDENT.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

This proceeding was started in the Court of Claims by the filing of a petition on September 14, 1920. The amended petition under which the evidence was taken and under which the case was tried and decided was filed in the Court of Claims on November 20, 1920, to recover from the United States \$1,077,637.80, as a balance due from the United States for goods sold, work done and damages, growing out of the refusal of the United States to carry out a written contract, dated May 14, 1918, which had been entered into in its behalf by the then Acting Secretary of the Navy for the manufacture of antiaircraft gun mounts and sights for ships of the Navy by the appellant herein at a price of \$7,860 each.

The written contract upon which the action was based contains no clause authorizing its cancellation

on the part of either party. The appellant contended and still contends that the measure of damages should be based upon the rule of law heretofore laid down by this court as for a breach of the contract.

The Government contends that the act of Congress of June 15, 1917 (40 Stat. 182), became the cancellation clause of the contract and that the decision of the Court of Claims is sound and conclusive, based upon the "Findings of fact" (pp. 119-131).

The contract involved in this case, Dept. No. 1498 (p. 13), was made and concluded the 14th day of May, A. D. 1918, and the mounts and sights provided for in said contract were intended for use on and were a part of the equipment of vessels of the Navy (p. 120).

The Court of Claims on the facts found concludes as a matter of law that the plaintiff is entitled to recover \$161,614.58, as set out in finding 14 (pp. 129 and 130), and that it is not entitled to recover as otherwise claimed. Judgment is directed for said sum of \$161,614.58 (p. 131).

We will refer to the plaintiff-appellant as claimant, and to the United States, the respondent, as defendant in this brief.

ARGUMENT.

The claimant in its brief herein has set forth ten specifications of error, all of which said specifications are answerable by the theory set forth below, based upon the rule of law, that contracts with the United States are so made with reference to the established law of the land, and should be so understood and

construed unless otherwise clearly indicated by the terms of the agreement.

Wilson v. Rousseau, 4 How. 646, 685.

The West River Bridge Co. v. Dix, 6 How. 507, 532.

United States v. Boisdore, 11 How. 63, 88.

Rees v. Watertown, 19 Wall. 107, 121.

Ogden v. Saunders, 12 Wheat. 213, 297.

Under date of March 4, 1917, the President approved an act of Congress making appropriations for the naval service for the fiscal year ending June 30, 1918, and for other purposes (39 Stat. 1168). This act contains under the heading Naval Emergency Fund (39 Stat. 1192) the following (the language to which particular attention will be invited is italicized by us):

To enable the President to *secure the more economical and expeditious delivery of materials*, equipment and munitions and secure the more expeditious construction of ships authorized and for the *purchase or construction of such additional torpedo boat destroyers, submarine chasers and such other naval small craft*, including aircraft, guns and ammunition for all of said vessels and aircraft and for each and every purpose connected therewith, as the President may direct, to be expended at the direction and in the discretion of the President, \$115,000,000, or so much thereof as may be necessary, and to be immediately available.

(a) That the word "person" as used in paragraphs (b), (c), next hereafter shall in-

clude any individual, trustee, firm, association, company, or corporation * * *. The words "*war material*" shall include arms, armament, ammunition, stores, supplies, and equipment for ships * * *.

(b) That *in time of war*, or of *national emergency* * * * the President is hereby authorized and empowered * * *.

Second. Within the limit of the amount appropriated therefor, to *modify or cancel any existing contract* for the building, production, or purchase of ships or war material; * * *

That all authority granted to the President in this paragraph, *to be exercised in time of national emergency*, shall cease on March 1, 1918.

(d) That whenever the United States shall cancel or modify any contract, * * * in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, * * *.

This was one of a series of acts giving to the President the power absolutely to control *all* contracts in the United States relating to foods, fuels, supplies, ships, equipment, and war material for the Army

and Navy, and in its interpretation and in the interpretation of the act following care should be taken to, if possible, determine from the acts themselves the intent of the legislative branch of the Government in the enactment of such laws.

June 15, 1917, the President approved an act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes. (40 Stat. 182.) This act contains under the heading "Emergency shipping fund" the following (the language to which particular attention will be invited is italicized by us):

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

* * * * *

(b) To *modify, suspend, cancel or requisition any existing or future contract for the building, production, or purchase of ships, or materials.*

* * * * *

Whenever the United States shall cancel, modify, suspend, or requisition any contract * * * in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover

such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, * * *

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: * * *

The word "person" as used herein shall include any individual, trustee, firm, association, company, corporation, or contractor.

* * * * *

The word "material" shall include stores, supplies, and *equipment for ships*, and everything required for or in connection with the production thereof.

* * * * *

All authority granted to the President herein, *or by him delegated*, shall *cease six months after a final treaty of peace* is proclaimed between this Government and the German Empire.

The language in the aforesaid acts is plainly unambiguous. Giving to the language used the ordinary import of its words, the power is given the President to cancel all and every contract for the building, production, or purchase of ships or material within the bounds of constitutional limitation. The word "any" as used in the act means any and every.

Ex parte Christy, 3 Howard, 292, 315.

Slaughter House cases, 16 Wallace, 36, 80.

The Mary Ann: Plumer, Claimant, 8 Wheaton, 380, 388.

When a statute is expressed in plain and unambiguous language the conclusion must be that the lawmaking body intended to mean what was plainly expressed. In such case there is no room for construction.

State Tonnage Tax Cases, 12 Wall. 204, 217.
Crawford v. Burke, 195 U. S. 176, 189.

The Supreme Court of the United States has disposed of the matter of the resort to extraneous facts and circumstances, including legislative discussion and debate for interpreting the statute:

It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which it is framed, and if that is plain, and if the law is within constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms.

Lake County v. Rolins, 130 U. S. 662, 670, 671.

Bate Refrigerating Company v. Sulzberger, 157 U. S. 1, 33.

United States v. Lexington Mill & Elevator Company, 232 U. S. 399, 409.

United States v. Bank, 234 U. S. 245, 258.

Where the language is plain and admits of not more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

Hamilton v. Rathbone, 175 U. S. 414, 421.

Caminetti v. The United States, 242 U. S. 485.

It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it.

Olive v. Walton, 33 Miss. 103, 114.

Green v. Weller, 32 Miss. 650.

Burr v. Dana, 22 Cal. 11.

Woodruff v. State, 3 Ark. 285.

Wassell v. Tunnah, 25 Ark. 101.

Green v. State, 59 Md. 123.

The subject of these acts is "any existing contract." The object intended to be accomplished is expressed in the act of March 4, 1917 (Rec. p. 149), "to secure the more economical and expeditious delivery of materials"; that in the act of June 15, 1917, while not expressed in exact words, is however, a clear and evident intendment, "to secure the more economical and expeditious delivery of materials" and "to enable the Government to stop the production of ships and materials no longer required in the national defense." This latter intendment is clearly shown by the language used limiting the authority to "cease six months after a final treaty of peace."

The court will take judicial notice that in all wars hostilities cease a year or more before the treaty is signed and that there would naturally be no reason to secure further materials from the date hostilities cease.

It is an established rule in the exposition of statutes that the intention of the lawgiver is to be deduced from a view of the whole and of every part of a statute taken and com-

pared together. The real intention, when accurately ascertained, will always prevail over the literal sense of terms, and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction, and absurdity. When the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt, and the objects and the remedy in view; and the intention is to be taken or presumed, according to what is consonant to reason and good discretion.

The words of a statute, if of common use, are to be taken in their natural and ordinary signification and import, and if technical words are used they are to be taken in their technical sense; * * *. (1 Kent Comm., par. 462.)

The mere literal construction ought not to prevail if it is opposed to the intention of the legislature, apparent from the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effected, the law requires that construction to be adopted.

United States v. Bassett, 2 Story, 389, 393.

The converse of this is true; therefore the literal construction ought to prevail if not opposed to the intention of the legislature apparent from the statute.

If the legislature use words which have received a judicial interpretation they are presumed to be used

in that sense, unless the contrary intent can be gathered from the statute.

McKee v. McKee, 17 Md. 352.

Huddleston v. Askey, 56 Ala. 218.

Posey v. Pressley, 60 Ala. 243.

Dawson v. Dawson, 23 Mo. App. 169.

"Any" has received such interpretation (*Supra* p. 6).

In view of the fact that it has been contended that these statutes are ambiguous, attention is invited to the fact that these statutes are *in pari materia*. Statutes *in pari materia* are those which relate to the same person or thing, or to the same class of persons or things. (36 Cyc. 1147.)

In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject (*United States v. Trans. Mo. Freight Association*, 24 L. R. A. 73), or having the same general purpose (*Peoples Bank v. Patterson Savings Bank*, 10 New Jersey Equity 13), should be read in connection with it (*Converse v. United States*, 21 Howard 463; *United States v. Freeman*, 3 Howard 556) as together constituting one law. (*Seward Company v. Aetna Life Insurance Company*, 90 Fed. 222.)

The endeavor should be made by tracing the history of legislation on the subject (*Struthers v. People*, 116 Ill. Appeals 481) to ascertain the uniform and consistent purpose of the legislature (*State v. Omaha Electric Co.*, 75 Nebr. 637, 648) or to discover how the policy of the legislature with reference to the subject

matter has been changed or modified from time to time (*Stock v. Prentice*, 43 Colo. 17).

With this purpose in view, therefore, it is proper to consider not only acts passed at the same session of the legislature but also acts passed at prior and subsequent sessions.

(*Jackson County v. Branahan*, 169 Ind. 80.)

The act of March 4, 1917, was passed "to enable the President to secure the more economical and expeditious delivery of materials," etc., and specifically limits this power so that it "in time of national emergency shall cease on March 1, 1918." The act places no specific limitation "in time of war" other than what the words themselves imply. The act of June 15, 1917, does not contain a provision to enable the President to secure more economical and expeditious delivery of materials. Authority was granted under said act to "cease six months after a final treaty of peace shall be proclaimed between the Government and the German Empire."

There has been doubt expressed as to the intent of these statutes and as to their meaning. It is respectfully submitted that if any ambiguity is, in the minds of the court, deemed to exist in any one of these statutes a careful consideration of the two acts together would clear such ambiguity.

One of the doubts raised up by the legal profession and by a decision of the Comptroller of the Treasury is as to the applicability of these laws to Government contracts, it being contended that the laws are only applicable to contracts between individuals. It is

respectfully submitted that to place such construction upon any or both of these laws it would be necessary to do violence to the exact language used. In the act of March 4, 1917, power was given covering "any existing contract," and in the act of June 15, 1917, "any existing or future contract." Language could not be plainer.

These laws were enacted in the interest of the public welfare and should be liberally construed with a view to promote the object in the mind of the legislature. (38 Cyc. 1173.) What was the intention of the Congress when it passed the act of March 4, 1917? The intention was clearly expressed, "to enable the President to secure the more economical and expeditious delivery of materials," etc., and he was empowered "to modify or cancel any existing contract for the building, production, or purchase of ships or war material."

For purpose of illustration let us assume all the large shipyards in the United States had contracts for the building of battleships or other vessels for the Government, which contracts for their execution required all the facilities of the shipyards. Would it not be fallacious to state that the act of March 4, 1917, which was for torpedo-boat destroyers, submarine chasers, and other small craft, did not apply to such contracts?

Again attention is invited to the exact language "any existing contract." Could not the President, acting through the Secretary of the Navy, have modified or canceled any such existing contract?

It is submitted that he could. The only restriction thereon is to be found in the act itself, which requires the President to make "just compensation."

This construction placed upon these acts by the Secretary of the Navy, whose duty it was to execute them on behalf of the President, is entitled to great consideration, and such construction should not be disregarded and overturned unless it is clearly erroneous. (36 Cyc. 1140, 1141, and cases therein cited; see also *La Belle Iron Works v. The United States*, 55 C. Cls. 462.) In the last-named case we find, at 466, "that where the act is ambiguous or uncertain, the construction of it by the administrative officers charged with its execution is entitled to great respect."

It is contended, however, that this law is not ambiguous. There is no ambiguity to be found in the language used. To place such construction upon the statute as has been attempted would, it is submitted, do violence to its specific language, which can not be done unless it is susceptible of two or more different meanings or applications *without* doing violence to its terms. (33 Cyc. 1118.)

The act of March 4, 1917, contains a limitation on the powers to be exercised thereunder as to their purpose, and in that the powers are specifically terminated March 1, 1918, if only a national emergency exists.

The act of June 15, 1917, contains no limitation as to the purpose for which the powers thereunder are conferred, and the limitations as to its termination

are extended until six months after the treaty of peace is signed. What was the intention of Congress in this act? The act was evidently not for the sole purpose of "securing the more economical and expeditious delivery of materials," etc. To have set forth that as the purpose of the act, which was not to terminate until six months after the signing of the treaty of peace, would in itself be an absurdity. It is submitted that the evident intention was to enable the President to cancel contracts for either the purpose of speeding up production during the war or terminating Government contracts whenever in the public interests the President should deem such action proper.

The provisions of the act of June 15, 1917, are provisions particularly applicable to the instant case, and for the reasons above set forth, the President, acting through the Secretary of the Navy, or the officers under him thereunto authorized, had power to modify or cancel a contract of the character of the one in controversy. The material was antiaircraft gun mounts and sights for ships of the Navy. The contract was one capable of being modified or canceled under the law, and the contract was canceled. (Record, pp. 120 and 125.)

Contract, Department No. 1498, must have been entered into under the law as it existed at the time the contract was made, namely, May 14, 1918. The Court will take judicial notice of the fact that war was in existence, that the acts of March 4, 1917, and of June 15, 1917, were in existence and operative

at that time, and, if the court shall so find, that the Navy Department had power to cancel the contract and was obligated thereunder to make just compensation to the claimant herein.

In their contention for anticipated profits under the contract, claimant has placed reliance upon cases all of which are based upon a wrongful cancellation or breach. It is admitted that for such cancellation or breach the contractor would be entitled to such proven profits, but it is respectfully submitted that in the instant case there was no such wrongful cancellation or breach. The decisions in the case of *United States v. Speed*, 8 Wallace 77; *United States v. Behan*, 110 U. S. 388; *United States v. Purcell Envelope Company*, 249 U. S. 313, and all other cases cited in the brief for claimant are based upon this primary factor, i. e., the wrongful cancellation or breach of the contract in each case.

Because of the existence of the act of June 15, 1917 (40 Stat. 182), it was the understanding of the parties that the Government had the power to cancel the contract at any time, and having so canceled the other party did not have the right to perform. Performance should cease when the Government should so elect and the contractor was only entitled to just compensation therefor. Could that just compensation possibly include the damage to which the contractor would have been entitled for a wrongful cancellation or breach? It is respectfully submitted that such interpretation would nullify the law.

The claimant in this case is entitled to no more and no less than the law of June 15, 1917, allows—that is, just compensation. With this in view the Court of Claims determined the just compensation to which claimant was entitled, and that just compensation did not include anticipated profits. Anticipated profits are simply and solely payment for the franchise right to complete that which the Government and the claimant in this case, in the light of the law, contracted could be terminated at any time the President saw fit.

It was not the intention of Congress to authorize the repudiation of a contract by an executive department of the Government, which could be done without authorization by Congress, nor was it the intention of Congress that in authorizing the cancellation the Government should be in the position of a violator of the contract. Congress by its act gave formal notice that all contracts were subject to termination at all times in the interest of the United States, but made the wise provision that just compensation should be paid should it become necessary to exercise the power.

Congress enacted these laws to empower the President to utilize every possible facility to win the war, and after the cessation of hostilities to save the Government from the expense of acquiring property which was not needed, and authorized the cancellation of and relief from the obligations of manufacturing contracts covering such property.

Where a contract is entered into and said contract contains a cancellation clause, or, as in this case, the contract was entered into with knowledge that under the law the President could terminate it at any time, such contract should be canceled in accordance with its terms and the law.

What does the contract and the law provide with reference to the instant case? It is submitted that the Government may modify or cancel the contract at any time, but must make "just compensation."

Counsel for the United States believe that the opinion in the instant case of the Court of Claims, delivered by Downey, Judge, and concurred in by Hay, Judge, Graham, Judge, Booth, Judge, and Campbell, Chief Justice, is sound and adopts the reasoning contained therein as its argument against each and every of the specifications of error set forth by claimant in its brief.

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,

Solicitor General.

ROBERT H. LOVETT,

Assistant Attorney General.

ALFRED A. WHEAT,

Special Assistant to the Attorney General.

ALEXANDER H. McCORMICK,

Special Assistant to the Attorney General.

TRANSCRIPT

OF

RECORD

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 480.

**HENRY FREYGANG AND ALBERT A. TROCON, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME OF THE
MIDLAND BRIDGE COMPANY, APPELLANTS,**

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 12, 1922.

(29,030)

(10-32)

RECEIVED BY THE UNITED STATES

POST OFFICE

NOV 1892

(29,080)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 480.

HENRY FREYGANG AND ALBERT A. TROCON, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME OF THE
MIDLAND BRIDGE COMPANY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Exhibit A—Contract, July 16, 1918.....	7	4
B—Supplemental agreement, April 14, 1920.....	29	20
C—Executive order.....	33	24
General traverse.....	35	24
Argument and submission of case.....	36	24
Findings of fact.....	37	25
Conclusion of law.....	40	28
Opinion of the court, Graham, J.....	40	28
Judgment of the court.....	44	31
Claimants' application for appeal.....	45	31
Allowance of appeal.....	45	32
Clerk's certificate.....	46	32

1

F

T

of

K

en

U

ag

th

ma

hu

wa

2

Sh

2,5

the

her

of

tha

the

to

it i

dit

sha

cha

I

as

wh

the

In the Court of Claims.

No. 34735.

HENRY FREYGANG AND ALBERT A. TROCON, Partners, Doing Business under the Firm Name of The Midland Bridge Company,

v.

THE UNITED STATES.

I. Petition.

(Filed November 18, 1920.)

To the Honorable the Court of Claims:

The claimants respectfully represent:

I. That they are partners doing business under the name and style of the Midland Bridge Company and have their principal office at Kansas City, in the State of Missouri.

II. On the 16th day of July in the year 1918, the claimants entered into a contract with the United States acting through the United States Shipping Board Emergency Fleet Corporation as the agent for the United States, a copy of which contract is annexed to this petition and marked Exhibit "A."

In said contract it was recited that a previous contract had been made between the parties for the construction of six (6) wooden hulls, that it was decided to cancel said contract and said contract is thereby cancelled by the contract of July 16, 1918.

It was further provided that the contractor should construct in accordance with the owner's plans and specifications, and under the rules and regulations of the American Bureau of Shipping, ten (10) complete 3-masted wooden schooner barges of 500 tons deadweight capacity, with the following proviso added hereto:

"Provided However, that if for, any reason whatsoever the Owner hereafter deem it inadvisable to proceed with the construction of any of the aforementioned hulls or barges, and notifies the Contractor to that effect in writing, the Contractor shall comply with the order of the Owner in that regard, with an obligation on the Owner, however, to substitute other hulls or barges of different design or size, which the Contractor shall construct under the terms and conditions hereof, for a fee to be determined by the Owner, but which shall be in proportion to the fees herein to be paid, according to the character and design of the substituted boat."

It was further provided in said contract that said Fleet Corporation representing the United States should pay the cost, the items of which were therein specifically defined, of all the work to be done by the claimants, and in consideration thereof should pay to the con-

tractor in addition to the cost the sum of six thousand dollars (\$6,000) for each of said ten barges.

III. Thereupon the claimants diligently proceeded with the construction of said barges and were prepared to deliver the same within the times respectively required by the contract, but prior to the arrival of the time for the delivery of the first of said barges which was the first of January, 1919, the said Fleet Corporation, acting for and on behalf of the United States, on the 28th day of October, 1918, notified the claimants to suspend all operations.

3 The claimants did suspend operations on eight (8) of the said barges, in pursuance of said order; and thereupon the claimants applied to said Fleet Corporation for the payment of all costs incurred under said contract, in accordance with the terms thereof, and also for the payment of the agreed fees for service in the construction of all ten of said barges.

IV. Thereafter on the 14th day of April, 1920, another contract was entered into by and between claimants and the Fleet Corporation, representing the United States, a copy of which is annexed to this petition as Exhibit "B." It was thereby agreed that said Fleet Corporation, representing the United States, should pay to the claimants actual costs incurred on account of said barges, work on which had been suspended as aforesaid, together with all costs of that description for which the claimants were liable to their subcontractors.

In said agreement of settlement the following provisions were made in regard to fees on the cancelled barges:

Article V. The Owner shall pay to the Contractor the sum of nine thousand dollars (\$9,000) as an advance payment on account of fees for the barges which are hereby cancelled.

Article VI. It is understood and agreed that the Contractor expressly reserves unto itself the right to sue the Owner for such damages in the form of said fees for cancelled barges which are claimed by the Contractor in addition to the \$9,000 hereinbefore provided to be paid, and if upon the final outcome of any such suit, it shall be determined that the Owner is liable to the Contractor for an amount in excess of the \$9,000 hereinbefore provided, the Owner shall pay to the Contractor such additional amount so determined."

4 V. In pursuance of the agreement contained in Article VI of said contract of April 14, 1920, the claimants hereby claim against the United States as principal on whose behalf the contract was executed the following amounts:

Fees as agreed on for eight (8) cancelled barges at \$6,000 each	\$48,000
Less advance payment made by said Fleet Corporation to the claimants in accordance with Article V of said contract..	9,000
Balance due	\$39,000

which amount claimants hereby claim.

VI. This claim is based, in addition to the contracts of July 16, 1918, and April 14, 1920, hereinbefore referred to and the full texts of which are annexed to this petition, upon the following laws of the United States and Executive Order of the President thereunder:

Shipping Act of 1916, approved September 7, 1916, (Chapter 451, 39 Stat. 728), particularly Section 3, creating a United States Shipping Board; Section 5, authorizing the Board to have vessels constructed and equipped in American shipyards; and Sec. 11, authorizing the Board to form, under the laws of the District of Columbia, a corporation for the construction, etc., of merchant vessels in the commerce of the United States; and under which the Shipping Board Emergency Fleet Corporation was established and incorporated.

Deficiency appropriation act, approved June 15, 1917 (Chapter 201, 40 Stat. 1022), authorizing the President to place an order with any person for such ships or material as may be required for the necessities of the government during the period of the war, and to purchase and take over the title to any ships in process of construction or thereafter to be constructed, and authorizing the President to exercise the power and authority thereby vested in him, and to expend the money therein and thereafter appropriated through such agent or agents as he shall determine from time to time.

Executive order of the President made in pursuance of said last named act, whereby he directed "that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction." A full copy of said Executive order is annexed to this petition as Exhibit "C."

Merchant Marine Act of 1920, approved June 5, 1920 (Chapter 250, 41 Stat. 988), repealing certain previous acts and parts of acts, but providing that all contracts or agreements lawfully entered into before the passage of said act, under any acts or parts of acts so repealed, shall be assumed and carried out by the United States Shipping Board.

VII. The claimants are citizens of the United States and have at all times borne true faith and allegiance to the Government of the United States. The claimants are the owners of this claim; and the claimants claim thirty-nine thousand dollars (\$39,000).

KING & KING,
Attorneys for Claimants.

STATE OF MISSOURI,
County of Jackson, ss:

Albert A. Trocon being duly sworn, deposes and say-: I am one of the claimants in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information and belief.

ALBERT A. TROCON.

Subscribed and sworn to before me this 5th day of November, 1920.
[SEAL.]

CÉCIL STONE,
Notary Public.

My commission expires Dec. 12, 1923.

EXHIBIT "A."

Contract made this sixteenth day of July, 1918, between Henry Freygang and Albert A. Trocon, copartners doing business under the name, Midland Bridge Company, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part (herein called the Owner).

Whereas the Contractor by a contract dated July 20, 1917, agreed to construct for the Owner six (6) wood hulls, according to the terms and conditions set forth in said contract, and

Whereas the Contractor under said Contract of July 20, 1917, and in the performance thereof was required by orders of the Owner to make changes in plans and specifications, for which and additional reasons the Contractor alleges it has been damaged and has suffered losses and has claims against the Owner amounting to approximately \$136,000.00, the just and fair settlement of which it is believed will be impossible, and will lead to dissatisfaction, disputes and delays, and

Whereas it now appears that the Contractor, under the terms of said contract of July 20, 1917, if the same were performed, would have an interest in the plant where said hulls are being built, the determination of which interest and the proper apportionment thereof to Contractor would be difficult and unsatisfactory to both parties, and

Whereas it is the desire of both parties to cancel said contract of July 20, 1917, and to settle all claims thereunder, and to settle and determine now, the rights of the respective parties in said plant and to provide by a new contract for completing the work to be done under said contract of July 20, 1917, and for doing the additional work provided for herein.

Now Therefore, in consideration of the compromise settlement of the rights and obligations of the parties under said contract of July 20, 1917, as hereinafter defined, and of the mutual covenants and agreements herein contained, it is agreed as follows:

I.

Cancellation of Old Contract and Settlement of Rights and Obligations Thereunder.

(1) Said contract of July 20, 1917, is hereby cancelled.

(2) The Contractor hereby acknowledges complete reimbursement for all expenditures made and full satisfaction of all payments due it under said contract of July 20, 1917, and/or any order, authorization, agreement or promise, either verbal or in writing, given or alleged to have been given by the Owner or any of its agents or representatives in connection with said contract or the performance thereof, it being clearly understood that the Contractor hereby waives all right to receive any profit or remuneration whatsoever for services performed or work done under said contract.

(3) The Contractor hereby expressly waives all damages and all claims of every kind and character due or alleged to be due it under or because of said contract of July 20, 1917, and/or any transactions which occurred in the performance thereof, and hereby releases and discharges the Owner from any and all obligations or liabilities under or by reason of said contract.

(4) The Contractor hereby expressly waives all claims to ownership in said hulls and in the plant where the same are being constructed and in all material, machinery, tools, equipment and appurtenances therein, except the machinery, tools and equipment supplied by the Contractor, and hereby sells, transfers and assigns to the Owner all its right, title and interest in said hulls and plant and in all the material, machinery, tools, equipment and appurtenances therein except the said machinery, tools and equipment supplied by it. In furtherance of the intent and purpose of this paragraph, it is agreed that the Contractor, with representatives of the Owner, will forthwith cause an inventory to be made of all the material, machinery, tools, equipment and appurtenances at said plant of every kind, belonging both to the Owner and to the Contractor, clearly classifying therein the property of the Owner and the property of the Contractor, and will cause said inventory to be filed with the Owner, and for the purpose of further protecting the Owner, will execute and deliver to the Owner a Bill of sale transferring to the Owner a good and sufficient title, free and clear of all liens and encumbrances, to all of said material, machinery, tools, equipment and appurtenances designated in said inventory as the Owner's property.

(5) In full payment for Contractor's entire interest in said plant, and in all the material, machinery, tools, equipment and appurtenances therein, except said machinery and equipment furnished by the Contractor, the Owner will pay the sum of sixty thousand dollars (\$60,000) if and when the original six hulls are completed and accepted by the owner as hereinafter provided, one-sixth of said sum,

or ten thousand dollars (\$10,000), to be paid to the contractor as each of said hulls is completed and accepted by the Owner.

(6) As full reimbursement and satisfaction for all expenditures made by Contractor to date on said yard and hulls, and in full payment for all overhead, including services of officials, managers, superintendents, clerical help, etc., rendered to date, both at yard office and Kansas City Office, and in full settlement of sundry small tools, fittings, etc., sold by Contractor to the Owner, and for which payment has not been made, list of which is on file with the Owner's District Supervisor for the Sixth District, and in full satisfaction of everything that is due Contractor under said contract of July 20, 1917, including all disputed accounts and items which the Contractor heretofore has claimed should be allowed, the Owner will pay to the Contractor, within thirty (30) days from date hereof, the sum of \$19,540.32.

(7) While the Owner, in accordance with the cancellation provision hereof, hereby releases and discharges the Contractor from the future performance of said contract of July 20, 1917, it is
10 expressly agreed that the Contractor is not, by reason of anything herein contained, released from liability for the proper performance by it to the date hereof of all matters and things by it to have been performed in said contract, this agreement being in no wise intended to release the Contractor from its obligation to have constructed said hulls to date hereof according to plans and specifications and orders of the Owner.

II.

Work to be Done.

The Contractor shall install all machinery, appliances and equipment at said plant and shall make all extensions and additions thereto which may be ordered by the Owner which in the judgment of the Owner are necessary to properly and expeditiously do the work hereunder contracted to be done.

(2) The Contractor shall complete, under the rules and regulations of the American Bureau of Shipping, said six (6) hulls partly completed, according to the original plans and specifications, with amendments thereto and modifications thereof which have been made to date by the Owner and of which the Contractor has been notified, which original plans and specifications as thus amended and modified are by reference made a part of this contract.

(3) The Contractor shall construct, in accordance with the Owner's standard drawings and specifications (ferris type) with amendments to date inclusive, which are hereto attached and made a part hereof, under the rules and regulations of the American Bureau of Shipping, two wood hulls suitable for cargo-carrying steamers of an estimated deadweight capacity of 3,500 tons.

(4) The Contractor shall construct, in accordance with the Owner's plans and specifications hereto attached and made a part hereof, under the instructions of the Owner, and under the rules and regulations of the American Bureau of Shipping, ten (10) complete 3-masted wooden schooner barges of 2,500 ton dead-weight capacity, Standard Design SD-67.

11 Provided however, that if for any reason whatsoever the Owner her-after deems it inadvisable to proceed with the construction of any of the aforementioned hulls or barges, and notifies the Contractor to that effect in writing, the Contractor shall comply with the order of the Owner in that regard, with an obligation on the Owner, however, to substitute other hulls or barges of different design or size, which it is agreed the Contractor shall construct under the terms and conditions hereof, for a fee to be determined by the Owner, but which shall be in proportion to the fees herein to be paid, according to the character and design of the substituted boat.

III.

Organization.

The Contractor shall, as nearly as possible, maintain its present organization and personnel at said shipyard, and shall, but only as ordered in writing by the Owner, perfect the same and acquire such additional superintendents and other agents and employees, including the proper administrative officers, as may, in the opinion of the District Supervisor, or other duly authorized representative of the Owner, be necessary to carry on the work herein contracted to be done. But the District Supervisor or other representative of the Owner possessing equal or higher authority, may at any time remove from the work to be done hereunder and dispense with the services of any officer, manager, superintendent, auditor, or any workman or employee of Contractor. Nothing herein contained shall be construed as an obligation on the Owner to allow as costs, salaries paid to administrative officers except as herein provided.

IV.

Delivery Dates.

It is agreed that time is of the essence of this contract, and the Contractor agrees to begin the work herein and to complete the same as soon as possible, and to deliver said hulls according to said drawings and specifications to the Owner, afloat at Houston Ship Channel, Texas, as follows:

12 The original six hulls to be completed shall be delivered respectively on August 1, August 10, August 20, September 1, September 15th and October 1, 1918.

The two Ferris type hulls shall be delivered respectively on January 1 and February 1, 1919.

The ten barges shall be delivered respectively on January 1, 1919, January 15, 1919, February 1, 1919, and one every thirty (30) days thereafter.

Adherence to Delivery Schedule.

In lieu of a penalty clause to insure adherence by the Contractor to the delivery schedule herein provided, it is expressly agreed that in exercising the right hereinafter reserved in the Owner to forfeit this contract for failure to make satisfactory progress, the Owner may use the delivery dates herein fixed and Contractor's likelihood of not complying or complying therewith at any stage of the work, as a basis of satisfactory progress, and may act accordingly in declaring or not declaring the contract forfeited.

V.

Extension of Time.

If the Contractor be delayed or obstructed in the performance or completion of the work provided for in this contract by the delays, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or by reason of strikes, fire, lightning, earthquake, flood, riot, insurrection or war, or by reason of suspension of deliveries of machinery or from any other cause beyond the control of the Contractor, beyond the time of delivery herein fixed, the same shall be extended for such a period of time equivalent to the time lost by the reason thereof, which shall be determined by the Owner.

VI.

Payment for Work and Material by Controlled Account.

The total actual cost as hereinafter defined of doing the
13 work herein contracted to be done, both on yard and hulls shall be paid by the Owner in the following manner:

In order to provide the cash funds necessary for carrying on the work to be done under this contract, the Owner will from time to time deposit in advance to the credit of the Owner, in such bank or banks as may be agreed upon, such sums as are deemed necessary in the opinion of the District Supervisor, or other duly authorized representative of the Owner, to carry out the work to be done under this contract. Such sums shall be withdrawn and used only in payment for the work contracted to be done hereunder, as approved by and upon checks countersigned by the duly authorized representative of the Owner, and each payment shall be credited as payment on account of the cost of the shipyard and/or hulls, as the case may be. Any interest paid by the bank or banks on such deposits is the property of the Owner, and upon the final completion of this contract or upon forfeiture of this contract by the Owner, or

upon default hereunder upon the part of the Contractor, the Owner may withdraw without the signature of the Contractor any balance on hand in any account established hereunder.

VII.

Actual Cost.

For the purpose of this contract the actual cost of the work herein contracted to be done, including the maintenance and operation of said shipyard, is defined as follows:

(a) The net cost, including freight and other transportation costs, but deducting all discounts, rebates, etc., of materials, machinery, tools and equipment entering into or expended in the execution of the work herein contracted to be done on yard and hulls.

(b) The cost of direct labor employed in the execution of said work.

(c) The running expenses of said yard, including such rental, and taxes, thereon as are paid, the cost of necessary repairs and maintenance, light, heat, power and insurance, including fire, liability and compensation insurance, and any other expenses applicable and necessary, and made in connection with the work herein contracted to be done, which are approved by the District Supervisor or other duly authorized representative of the Owner. Income taxes, excess profit taxes, and any similar taxes which may be assessed against or paid by the Contractor, shall not be treated as actual costs, but shall be paid by the Contractor.

(d) Losses actually sustained in connection with the work herein contracted for, including losses from fire, floods, storm, riot, vandalism, acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(e) Salaries and other expenses not herein specifically mentioned, whether considered overhead or otherwise, which are approved by the District Supervisor, or other duly authorized representatives of the Owner, whose decision thereon shall be final, but always with the right reserved in the Home Office of the Owner to change or revoke any action of its said District Supervisor or other authorized representative made in this regard.

(f) A depreciation of one and one-half per cent ($1\frac{1}{2}\%$) per month on all machinery and equipment furnished by the Contractor now at said shipyard and actually used in the work to be done under this contract, a complete list of which, with valuation agreed upon, on which said depreciation shall be computed, is on file in the office of the District Supervisor of the Owner for the Sixth District, and such additional machinery and equipment as the Contractor may, at the request of Owner's District Supervisor, furnish, the value of which, on which said depreciation shall be computed, shall be deter-

mined by said District Supervisor. Provided, however, that when in the judgment of the Owner's District Supervisor, any or all of said machinery and equipment shall no longer be required for the completion of the work to be done under this contract, the Owner may notify the Contractor in writing to that effect and the payment of said depreciation shall thereupon cease as to machinery and equipment which shall no longer be required.

15

VIII.

Orders for Materials.

The Owner shall have control through its authorized representatives of all orders for materials, machinery, equipment, supplies and other purchases and commitments made under this agreement for both yard and hulls, and all contracts and orders placed by the Contractor shall be in the name of the Owner by the Contractor, and shall be first approved in writing by the Owner, who shall always keep at said yard a representative for this purpose, and it is understood that the Contractor shall assume no pecuniary liability under or by reason of such obligations where made with the written approval of the Owner.

The materials and appliances to be used in the work herein contracted to be done shall be ordered by the Contractor, who will receive the same and make payment from the funds deposited by the Owner, as provided in Article VI hereof, direct to the individual, firm or corporation with whom the order has been placed, at the price stipulated in the order and in accordance with such terms of payment as may be arranged by the Contractor, with such individual, firm or corporation.

Manner and Priority of Obtaining Materials and Equipment.

It is recognized, in view of war conditions, that it may become necessary for the United States to exercise complete control over the manner and priority in which materials, supplies and equipment necessary for the work hereunder are obtained by, or furnished, to the Contractor. It is agreed between the parties hereto that if required by the Owner and/or the United States, the Contractor will promptly submit to the Owner and/or the United States a classified schedule of the Contractor's requirements for all materials, supplies and equipment to be used under this contract, and copies of any or all contracts, agreements or orders for such materials, supplies or equipment, and the Contractor hereby agrees that it will promptly comply with, and be bound by any and all instructions issued by the Owner and/or the United States with respect to such contracts, agreements or orders for materials, supplies and equipment.

16

IX.

Contractor's Fee.

In consideration of the faithful performance of this agreement by the Contractor, the Owner shall pay the Contractor for services in doing, to the satisfaction of the Owner, all the work which the Owner may order to be done at and upon said yard, as herein provided, and for completing the construction of said two Ferris type hulls, the sum of eight thousand dollars (\$8,000.00) per hull, and for constructing the ten barges as herein provided, the sum of six thousand dollars (\$6,000.00) per barge for each of said ten barges, said fee to be paid as to each hull and barge respectively when the same is delivered to and accepted by the Owner, and in addition thereto, shall pay to the Contractor one-half of the saving effected if Contractor builds said two additional Ferris type hulls at an average actual cost under \$360,000.00 the estimated cost thereof per hull, and said \$360,000.00, it being definitely understood that the fee herein provided is for any and all work on the yard which the Owner may order as herein provided, as well as on hulls and barges; that the Contractor in consideration of the compromise settlement herein made, shall complete the original six hulls now under construction without fee or remuneration of any kind; that the said purchase price of \$50,000.00 for Contractor's interest in said yard and said reimbursement of \$19,240.32 herein agreed upon, and said fee on new hulls and barges as herein provided, and the amount which the Contractor may earn by building said Ferris hulls for less than \$360,000.00 each, shall be all the remuneration of any kind whatsoever which the Contractor shall receive hereunder, excepting
17 any larger fee that may be paid for substituted hulls or barges of a different type or design as provided in Article II hereof.

X.

Workmanship and Materials.

The workmanship on said vessels in detail and finish in all parts shall be first-class and of the very best quality, and shall at all times be subject to the inspection of the Owner's inspectors and representatives who may reject any unfit workmanship or materials, either before or after said materials are put or worked into construction. The materials and parts shall be of the quality and characteristics best adapted to the various purposes for which they may be used, and shall conform to the requirements and specifications of the Owner and American Bureau of Shipping.

The Contractor shall supply such assistance as may be required by the inspectors of the Owner in making any tests and inspections of such materials and parts at the shipyard considered necessary by such inspectors or surveyors.

XI.

Inspection.

The vessels may be inspected during the progress of the work by representatives of the Owner and surveyors of the American Bureau of Shipping. All expense of inspection (other than that of the Owner) and certificates shall be considered as part of the actual cost of the hulls. In addition to the surveyors of the American Bureau of Shipping, the Owner will employ one or more inspectors of recognized ability in their profession to supervise and assist in the construction of the hulls. They, and their assistants, described herein as the Owner's inspectors, shall be required to watch closely the construction. If the decision of any inspector or any question is not, in the opinion of Contractor, for the best interest of the Owner or Contractor, the Contractor shall immediately notify the District Supervisor of the Owner in writing to that effect. All questions arising under the contract at the shipyard shall be referred to the Owner's District Supervisor, and his decision on all questions when rendered under his general authority or after approval by the Owner shall be binding, subject in all cases to appeal, as provided in Article XXIV hereof.

XII.

Alterations.

The Owner shall have the right, but only by orders in writing, to make such alterations, omissions, additions or substitutions as the Owner may deem necessary. The Contractor agrees to execute and to carry the same into effect as though such alterations, omissions, additions or substitutions were originally provided for in the contract, without any additional fee or remuneration of any kind unless said alterations, omission, addition or substitution is so material as to constitute a change in design, in which event the amount to be paid to the Contractor as its fee shall be increased to an amount to be determined by the Owner. If by reason of any alteration, omission, addition or substitution ordered by the Owner, or if by reason of failure of the Owner to supply material or facilities, or if for any other reason whatsoever the Contractor is delayed in completion of the vessel or vessels so affected, the time of delivery shall be extended, but the Contractor shall not be entitled to any damages or additional remuneration because of said delay.

XIII.

Forfeitures.

In the case of any failure or omission of the Contractor at any stage of the work, prior to completion, from any cause or causes, to go forward with the work and make progress toward its completion satis-

factory to the Owner, or in case of failure by the Contractor to exercise economy in the use of labor, tools, appliances and/or materials, or to use reasonable skill in the construction of said vessels satisfactory to the Owner, or in case of any dishonesty by the Contractor proven to the satisfaction of the Owner, or in case of a breach by the Contractor of any of its covenants or agreements, the owner may declare this contract forfeited. In that event, the Owner may immediately enter the shipyard and take possession of it and its facilities, and of the vessels, materials and equipment, and of the machinery, tools and equipment of the Contractor, and may, by contract with another Contractor, or otherwise, proceed with the completion of said vessels, or such of them as it sees fit, either at the shipyard, with the equipment and facilities thereof, and with the Contractor's organization, tools, machinery and equipment, or such part thereof as it sees fit, or elsewhere, and use for that purpose such of said material or equipment as in its discretion seems advisable. Upon declaring such a forfeiture, the Owner shall forthwith cause to be taken and filed with the Owner a full inventory and statement of all work done or begun on or about said yard and vessels and of all material on hand, and of all machinery, tools and equipment in or about said yard, whether belonging to the Contractor or not, and whether or not used in the construction of said vessels. In case the Owner shall thus cause this contract to be forfeited, the amount to be paid to the Contractor, it is agreed, shall be that proportion of the Contractor's fee earned up to the time of such forfeiture, minus such damages as the Owner may have suffered because of such unsatisfactory progress, or failure to exercise economy, or reasonable skill, or dishonesty, or breach of contract by the Contractor, which payment shall not be made to the Contractor until all of said vessels are completed or the work otherwise terminated.

Provided However, that if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder and that the delays or defaults have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Director General of the Owner may deem proper to complete the work.

20

XIV.

The Contractor agrees to procure as far as procurable, and thereafter maintain, such insurance in such form, on such property, to cover such contingencies, in such amounts, and for such periods as the Owner shall approve or require. The policies shall provide that the loss, if any, shall be payable to the Owner. The Owner may dispense with any or all insurance, or have the right itself to carry such risks. Should any vessel be partially or totally destroyed, or a total loss, no additional hull shall be built under this contract in order to replace it unless the Owner so directs. In the event of destruction, the Owner shall pay to the Contractor that part of the Contractor's fee earned up to the time of such loss or destruction, and still unpaid.

XV.

Casualty.

The Contractor agrees to protect the Owner and itself against any claims for accidents or casualties to employees or workmen or other in, or about the work covered by this contract by proper casualty and liability insurance, the cost of which shall be considered as a part of the cost of doing the work herein provided, or the Owner shall have the right to carry such risks.

XVI.

Patents.

The Contractor shall, to the best of its ability, protect the Owner against claims for any infringement of patents or patent rights and for the use of any patented articles embodied or to be embodied in the vessels, by suitable agreement satisfactory to the Owner as to the use of such patents or patent rights. The Owner will assume all costs, expenses and damages which it or the Contractor may be obliged to pay to procure such agreements or to pay by reason of any infringement of patent or patent rights or the use of patented articles not covered by such agreements, pursuant to decree
21 by a proper Court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees (which shall be furnished free of cost to the Owner) in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly notify the Owner in writing of any claims of infringement that may from time to time be brought to the Contractor's attention.

XVII.

All the material, tools, equipment, supplies and appliances purchased for the work to be done hereunder and not used, shall be and remain the property of the Owner, and the amount realized from the sale or other disposition thereof, and the salvage value of all tools, scaffolding, belting, hose, and similar articles, as well as of all scrap and waste, containers, etc., shall be the Owner's and credited to its account.

XVIII.

Labor and Wages.

The Contractor shall comply with all instructions as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner in its discretion will give such assistance as shall be within its power in securing and retaining the

labor necessary for the work to be done hereunder. The Contractor will promptly notify the Owner of any labor difficulties.

XIX.

Inspection Certificate.

No inspection certificate given or payment made under the terms of this contract (except final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be a waiver of the right of the Owner to direct the replacement of unsatisfactory workmanship or material.

XX.

Title.

Title to all improvements, and to all material, tools, supplies, equipment and appurtenances paid for by the Owner, shall be and remain the property of the Owner, and the title to the vessels as constructed shall vest in the United States of America, and the Contractor shall be held to account to the Owner, in a manner satisfactory to the Owner as determined by its District Supervisor, for all material, tools, supplies, equipment and appurtenances which are delivered to said shipyard, and on failure of Contractor to so account or any of said material, tools, supplies, equipment and appurtenances there shall be deducted from the fee next thereafter to be paid the Contractor the value thereof, and in case there is no fee thereafter due the Contractor, from which to make said deductions, the Contractor shall be nevertheless liable and subject to suit therefor.

XXI.

Liens and Taxes.

The Contractor will keep the vessels in the course of construction, and all of the Owner's property of every kind and description at said shipyard, free and clear from all claims, liens or encumbrances of any kind or description (except liens or encumbrances accruing through the default of the Owner, and/or for which the Owner shall be responsible) and shall, before delivery of each vessel or other property of the Owner, show to the satisfaction of the Owner that same is free and clear of any claim, liens, encumbrances, except as aforesaid. The Contractor agrees that it will, to the extent that funds are available under the terms of Article VI, promptly pay for all labor, material and other services rendered to it in connection with the work under this contract. Any taxes assessed against the plant, materials on hand, or vessels under construction, shall be paid as a part of the actual cost. But the Contractor shall not pay any such taxes, except upon directions from the Owner.

XXII.

Account.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work and material under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be adequate for the determination of actual costs and shall be approved by the Owner, and to this end the Owner may send Auditors to the shipyard and to the Contractor's offices, to supervise and assist in the accounting.

Account of Costs.

The actual cost of the vessels herein contracted for shall also be computed in the manner defined in Article VII hereof, and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract, and as designated by the Owner.

Account of Plant.

The actual cost of building, ways, dredging, plant and appurtenances, together with the cost of any alterations made to the buildings or other improvements, shall be kept in a separate detailed plant cost account and inventory, and such cost shall include, in addition to the direct cost of such buildings, ways, plant and appurtenances, a proper proportion of the overhead charges incurred in the work under this contract.

XXIII.

Control of Contractor's Officers and Employees.

21 The Owner, by its District Supervisor or other representative of equal or greater authority, shall have the right to require the Contractor to discharge and dispense with the services of any officer, manager, agent, superintendent, consulting Engineer or expert, or other employee. Final decision as to this shall rest with the Director General of the Owner.

XXIV.

Disputes.

In case the parties fail to agree as to any matter contained in or connected with this contract, or if any doubt or dispute arises as to the meaning, construction or effect of this contract, or of any of the provisions or covenants hereof, or of the plans and specifications or any part or parts thereof which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or to be used, or the time to be allowed, or the amount to be paid or allowed for alterations, omissions, additions or substitutions, or as to any other particular, the matter shall (unless otherwise provided) be promptly referred to and determined by the Director General of the Owner and his decision in writing shall be final and binding upon the parties, except as hereinafter provided.

In case the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind regarding any matter, and shall give written notice to the Owner to that effect within ten (10) days after said decision of the Director General which the Contractor deems adverse to it, such matter shall be determined by a Board which shall consist of three disinterested naval architects or engineers or experts, to be appointed, one by the Owner, one by the Contractor, and the third by the two so appointed. Such Board shall within thirty (30) days after submission of such matter to it make its determination, and its finding (made by a majority of the Board) shall be conclusive on both parties. Provided, however, that if the Contractor fails to notify the Owner in writing of its intent to appeal any decision of the Director General within said ten (10) days after receiving written notice of such adverse decision, the decision of the Director General shall become final and binding upon both parties without appeal to the Board herein provided for. The cost of any such arbitration shall be borne equally by the Owner and the Contractor.

XXV.

Contractor's Interest in Subcontract.

It is agreed that in the furtherance of this contract, the Contractor shall not make any contract, agreement or arrangement with any other person, firm, or corporation in which the Contractor is interested as officer, director, stockholder, or otherwise, or with any affiliated controlling or controlled firm or corporation, unless such sub-contract, agreement or arrangement and the relationship of the parties is first submitted to the Owner and its assent in writing obtained. In the event any sub-contract, agreement or arrangement is made by the Contractor except as above provided, the Owner may require the Contractor to immediately cancel such sub-contract,

agreement, in which event there shall be no liability upon the Owner, the Contractor hereby agreeing to obey the Owner's instructions with respect thereto and to save harmless and indemnify the Owner against any claim which might be made against it on account of the cancellation of such sub-contract, agreement or arrangement. The Contractor further agrees that the Owner may withhold from the payments to become due it an amount sufficient to indemnify the Owner against any claim which may be made on account of the cancellation of such sub-contract, agreement or arrangement.

XXVI.

Protection of Owner's Interests.

The Contractor, in all its acts hereunder, shall use his best efforts to protect, and subserve the interests of the Owner. The Contractor hereby agrees that it will procure all necessary permits and
26 licenses (the expense thereof to be a part of the cost of the vessels and/or plant) and obey and abide by all laws, regulations, ordinances, and other rules applying to the work hereunder, of the United States of America, of the State or Territory wherein such work is done, or any sub-division thereof, or of any duly constituted public authority.

XXVII.

Control by Owner.

The Contractor shall in the performance of its agreement hereunder comply with and be bound by all legal directions and instructions, and all decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such direction, instruction or decision, shall be a justification and protection to the Contractor for any action so taken.

XXVIII.

Participation in Profits.

No member of or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to this contract so far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (36 Stats. 1109).

XXIX.

Guaranty Regarding Commissions.

The Contractor expressly warrants that it has employed no third person or persons to solicit or obtain this contract in its behalf or to cause or procure the same to be obtained upon compensation in any

way contingent, in whole or in part, upon such procurement; and that it has not paid, or promised or agreed to pay, to any third person or persons in consideration of such procurement or in compensation for services in connection therewith any brokerage, commission or percentage upon the amount receivable by him hereunder, and that he has not in estimating the contract price demanded by it, included any sum by reason of any such brokerage, commission or percentage, and that all moneys payable to it hereunder are free from obligation to any other persons for services rendered or supposed to have been rendered in the procurement of this contract.

It is further agreed that any breach of this warranty shall constitute adequate cause for the forfeiture of this contract by the Owner and that the Owner may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission or percentage so paid, or agreed to be paid.

XXX.

Contract not Assignable.

This contract shall not be assigned by the Contractor, nor shall any interest therein or any payment due the Contractor thereunder, without the consent of the Owner in writing.

XXXI.

It is definitely understood that said yard, and all machinery, tools, equipment, appliances and everything therein, except the machinery and equipment supplied by the Contractor as hereinbefore defined, is the exclusive property of the owner, in which the Contractor has no interest except to use the same as herein provided to do the work to be done hereunder, without any right in the Contractor to build additional vessels thereon, and that at the completion of the work to be done hereunder or at any other termination of this contract, the Contractor may be required to remove the machinery, tools and equipment supplied by it, and the Owner may operate said yard in any manner it sees fit by another Contractor or otherwise, and if and as soon as any of the shipways at said yard become vacant because of completion by Contractor of the work contracted to be done hereunder, the Owner may, in its discretion, use said way or ways as it sees fit, by itself or by another Contractor, providing it does not interfere by such use with the Contractor's doing the work which it has contracted to do hereunder.

XXXII.

Provisions to be Added if Desired.

This contract is executed and delivered upon the understanding that, if desired by the Owner, a provision, satisfactory in form and

terms to the Owner, restricting the hours of labor for laborers and mechanics employed by the Contractor or by sub-contractors, or providing for the payment of extra compensation for overtime work, will be inserted in the contract with the same force and effect as if inserted in the Contract before the execution and delivery thereof.

All conversations, correspondence, understandings and agreements of every kind heretofore had or alleged to have been had between the parties, or any of their agents or representatives, whether verbal or in writing, it is agreed, are embodied in this contract, which is now the one and only agreement between the parties with reference to this subject matter.

In Witness Whereof the parties have caused these presents to be executed and the Owner has caused its corporate seal to be hereunto affixed on the day and year above stated.

ALBERT A. TROCON,
HENRY FREYGANG,

Copartners, Doing Business as Midland Bridge Company.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.

HOWARD CONLEY,

[SEAL.]

Vice President.

29 Attest:

C. BRADFORD FRALEY,
Assistant Secretary.

Approved as to form.

Date, —, —, —.

WILLARD C. McNEIL,
Legal Division.

Approved: July 29, 1918.

MORRIS DORM FERRIS,
Manager Contract Division.

Approved,

ED. FREE,
Asst. Comptroller.

EXHIBIT "B."

Supplemental Agreement Affecting Contract.

393-WH and WBC.

Agreement entered into this 14th day of April, 1920, between Henry Freygang and Albert A. Trocon, a copartnership doing business under the firm name of Midland Bridge Company, in Kansas City, Missouri, (herein called "Contractor"), party of the first part,

and the United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, (herein called "Owner"), acting for and in behalf of the United States of America, (herein called "United States"), party of the second part, Witnesseth:

Whereas, a certain Contract, Contract No. 54, dated July 20th, 1917, was entered into between the parties hereto, providing for the construction and delivery of six (6) wooden hulls; and

Whereas, Contract No. 54 was superseded by a Contract between the said parties, dated July 16th, 1918, Contract No. 393-WH and WBC, (herein called "Contract"), providing for the completion of the said six (6) Ferris Hulls on a cost basis, and in addition for the construction and delivery of two (2) additional Ferris hulls on a cost plus a fixed fee of eight thousand dollars (\$8,000) each and construction and delivery of ten (10) barges on a cost basis plus a fixed fee of six thousand dollars (\$6,000) each; and

30 Whereas, it was desirable in the public interest to suspend operations under the Contract and to that end the Contractor at the direction of the Owner suspended operations on eight (8) of the said barges on October 28th, 1918; and

Whereas, in connection with the suspended portion of the Contract the Contractor properly employed capital, made expenditures and incurred liabilities in preparation therefor; and

Whereas, the Contractor has presented claims for cost arising out of the construction of the hulls under the Contract which were not suspended in addition to claims arising out of the suspension of eight (8) barges as aforesaid; and

Whereas, the Contractor has presented additional claims for fees on account of the said suspended barges; and

Whereas, it is now the desire of the parties to compromise, settle and adjust any and all said claims of the Contractor, arising out of the Contract, the suspension and partial cancellation thereof, except as hereinafter specifically provided in Articles V and VI hereof,

Now, Therefore, in consideration of the promises and the mutual covenants herein contained, it is agreed between the parties hereto as follows:

Article I.

The Contract, in so far as eight (8) suspended barges are concerned is hereby terminated, cancelled and annulled.

Article II.

The Owner shall forthwith pay to the Contractor the sum of five thousand, eight hundred and ten dollars (\$5,810.00).

Article III.

The Contractor hereby waives all right, title and interest in and to the plant where the contract was performed, and plant equipment,

machinery and materials therein, except such equipment as was supplied by the Contractor.

31

Article IV.

(1) The Owner shall assume and settle for the Contractor any and all commitments and sub-contracts placed by the Contractor under the Contract prior to October 28, 1918, in so far as the sub-contracts and commitments were necessary for and did not exceed the requirements of the Contract.

(2) The Contractor shall have no right, title or interest in or to any of the material acquired or to be acquired under the settlement of the said sub-contracts or commitments and title to all material acquired by the Owner under the settlement of the said subcontracts and commitments shall vest in the United States.

(3) The Owner shall further settle and adjust for the Contractor all claims, demands or law suits which may have arisen or which may hereafter arise, in so far as liability on the part of the Owner for such claims, demands and law suits was established by the Contract, and nothing herein contained shall be construed to prejudice the rights of the Contractor for protection as provided in the contract.

Article V.

The Owner shall pay to the Contractor the sum of nine thousand dollars (\$9,000) as an advance payment on account of fees for the barges which are hereby cancelled.

Article VI.

It is understood and agreed that the Contractor expressly reserves unto itself the right to sue the Owner for such damages in the form of said fees for cancelled barges which are claimed by the Contractor in addition to the \$9,000 hereinbefore provided to be paid, and if upon the final outcome of any such suit, it shall be determined that the Owner is liable to the Contractor for an amount in excess of the \$9,000 hereinbefore provided, the Owner shall pay to the Contractor such additional amount so determined.

32

Article VII.

The Contractor, for itself, its successors and assigns, except as hereinbefore provided in Article VI hereof does hereby remise, release and forever discharge the Owner and the United States from any and all debts, dues, demands, sum or sums of money accounts, reckonings or claims whatsoever due or to become due in law or in equity, under or by reason of or arising out of the contract, the suspension and partial cancellation thereof, or any order, authorization, agreement or promise, either verbal or in writing, expressed or implied, given or alleged to have been given by the Owner or any of its duly author-

ized representatives in connection with the contract or any and all transactions between the parties hereto.

Article VIII.

All disbursements, settlements or adjustments made under or growing out of this agreement shall be subject to such audit or audits as may be determined by the General Comptroller of the Owner, and all opinion of such General Comptroller necessary for said audit shall be at his or at his duly authorized representatives' disposal. Any omissions, irregularities or discrepancies found by any further audit shall be subject to adjustment.

Article IX.

This agreement shall be executed in triplicate and the respective copies shall be known as Parts I, II, and III. Parts I and III, shall be delivered to the Owner and Part II shall be delivered to the Contractor. Said respective parts shall be of equal legal force and effect for any and all purposes.

In Witness Whereof, the parties hereto have caused this agreement to be properly executed and the Owner has caused its corporate seal to be hereunto effected, duly attested, on the day and year first above written.

33 Witness as to Henry Freygang.

Witness as to Albert A. Trocon.

HENRY FREYGANG,
ALBERT A. TROCON

Doing Business under the Firm

Name of Midland Bridge Co.

[SEAL.]

EMERGENCY FLEET CORPORATION,
UNITED STATES SHIPPING BOARD,
By W. S. BENSON,
President.

Attest:

J. W. FLAHERTY,
Secretary.

Approved as to Form

W. R. COUGLEARE,
Assistant Counsel.

Approved:

FRANCIS W. McGOVERN,
Chairman Construction Claims Board.

EXHIBIT "C."

Executive Order Delegating to the Shipping Board and the Emergency Fleet Corporation the Powers Granted the President by the Emergency Shipping Legislation.

By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase and requisitioning of materials for ship construction.

34 And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management and disposition of such vessels and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation or through any other corporation organized by it for such purpose.

WOODROW WILSON.

The White House,
11 July, 1917.

35

II. *General Traverse.*

(Filed January 18, 1921.)

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

36

III. *Argument and Submission of Case.*

On February 15, 1922, this case was argued and submitted by Mr. George A. King, for the plaintiff, and by Mr. F. E. Scott, for the defendants.

37 IV. *Findings of Fact, Conclusion of Law, and Opinion of the Court by Graham, J.*

Entered April 10, 1922.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Facts.

I.

On July 20, 1917, the plaintiffs, Henry Freygang and Albert A. Trecon, citizens of the United States, and copartners doing a contracting business under the firm name of the Midland Bridge Company (hereinafter called the plaintiff), with principal business office at Kansas City, Mo., entered into a contract with the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, for the construction for said Fleet Corporation of six wooden hulls for cargo-carrying steamers, to be delivered at the works of the plaintiff at Houston Ship Channel, Texas, on or before July 1, 1918.

II.

The plaintiff thereupon proceeded under said contract with the construction of the necessary construction plant and the construction of said six hulls. Said hulls were not completed by July 1, 1918, and on July 16, 1918, the parties to said contract entered into a contract which provided for the cancellation of said contract of July 20, 1917, but provided for the completion of said six hulls called for thereby, and also provided for the construction by September 1, 1919, of two additional wooden hulls for cargo-carrying steamers, and 10 three-masted wooden schooner barges. A copy of said contract of July 16, 1918, is annexed to the plaintiff's petition as Exhibit A, and is by reference made a part of these findings of fact.

38

III.

The plaintiff proceeded with the work under the new contract of July 16, 1918, until October 28, 1918, when the said Emergency Fleet Corporation notified the plaintiff that said contract was canceled and ordered it to stop work and make no further expenditures under the contract.

By communications of October 29 and 31, following, to the contractors, said Fleet Corporation modified its above-noted order of October 28, by making it apply only to 8 of the 10 barges called for by the contract, and notified the plaintiff that otherwise the contract was in full force, and directed it to proceed with the work not canceled, which work was later completed by the plaintiff.

IV.

At the time of the said Fleet Corporation's order reducing from 10 to 2 the number of barges to be constructed most of the materials for the construction of all 10 of said barges had been ordered by the plaintiff and a part delivered at the construction plant. Approximately something over one-third of the material for construction had been delivered prior to January 1, 1919, owing to it not being possible to cancel certain orders for materials. The orders for the balance of the materials for the said 8 barges were canceled. The plaintiff at that time was in a position to proceed with the construction of all 10 barges and thereafter offered to proceed with the construction of the 8 barges, work on which had been ordered to be stopped, or upon barges of different character and design which might be substituted in their place by the Fleet Corporation as provided by the contract; but at no time did the Fleet Corporation direct or give permission to the plaintiff to proceed with the construction of said 8 barges or of any other substituted hulls or barges in place thereof. The action of the Fleet Corporation in reducing the number of barges to be constructed by the plaintiff was not due to any fault on the part of the plaintiff.

V.

The said construction plant and such of the plaintiff's organization as was necessary to the completion of the uncanceled portion of the contract work were maintained until the completion of such work in the fall or early winter of the year 1919, at which time the plant was dismantled and ceased to exist as such; and the construction of the said 8 canceled barges could have been supervised and carried on by substantially the same general organization as carried on the completion of the remainder of the contract work.

VI.

Henry Freygang, a member of the plaintiff's firm, was paid by the Fleet Corporation from July 16, 1918, the date of the contract in controversy, to November 30, 1919, a salary of \$350 per month, making a total sum of approximately \$5,775. George Cole, an employee of the plaintiff firm, was paid by the Fleet Corporation from July 16, 1918, to December 15, 1919, a salary of \$500 per month, making a total sum of approximately \$8,500.

39 Albert A. Trocon, the other member of the plaintiff firm, spent the greater part of his time at the office of the company, at Kansas City, where he looked after the office work of the firm, including supervising other contracts than the one in controversy. During the period between October 28, 1918, the date of the cancellation of the 8 barges, and September 1, 1919, the date for the completion of the last barge and the work under this contract, as fixed by the contract, the plaintiff firm also did work on 22 other

contracts located in the States of Kansas, Oklahoma, Idaho, Missouri New Mexico, Wyoming, Arkansas, and Texas, and these matters were largely looked after by Mr. Trocon.

VII.

After the completion of the uncanceled portion of the work called for by the said contract of June 16, 1918, by reason of the failure of the Fleet Corporation to substitute other hulls or barges for the said 8 barges on which work was stopped, the plaintiff asserted a claim for a fee of \$6,000 for each of said canceled barges, making a total of \$48,000 which it claimed was due under the contract.

Upon consideration of said claim the plaintiff was finally offered the sum of \$12,000 as a compromise settlement and final adjustment of it, which the plaintiff refused to accept.

VIII.

After the refusal of the plaintiff to accept the said offer the defendant stated in a communication to the plaintiff that it would make a careful investigation as to the proportion of work done on said canceled barges and would arrive at a proportion of the fee that the plaintiff was entitled to receive based upon the portion of work performed with a view to allowing the plaintiff "to accept 75 per cent of such award and sue in the Court of Claims for the remainder." The amount so ascertained as an award was \$12,000.

IX.

Under date of April 14, 1920, the plaintiff and said Fleet Corporation entered into a supplemental contract for the settlement of certain claims asserted by the plaintiff based upon the original contract and the work performed thereunder, which supplemental contract is set forth as Exhibit B to the plaintiff's petition and is by reference made a part of these findings. There was paid to the plaintiff under this supplemental contract the sum of \$5,810 for certain expenditures claimed to have been made by it, and \$9,000 as an advance payment on account of fees for barges which were canceled.

X.

Prior to the execution by the parties of said supplemental contract there had been paid to the plaintiff under the contract June 16, 1918, the following payments called for thereunder: \$16,000, being \$8,000 each for the construction of two Ferris hulls; \$12,000 being \$6,000 each for the construction of two steel barges; \$60,000, for the plaintiff's interest in the plant at the time the original contract was made; and \$19,240.32, reimbursement for matters arising before the execution of said original contract.

XI.

Under date of July 11, 1917, the President promulgated an Executive order as follows:

"Executive Order Delegating to the Shipping Board and the Emergency Fleet Corporation the Powers Granted the President by the Emergency Shipping Legislation.

"By virtue of authority vested in me in the section entitled 'Emergency shipping fund' of an act of Congress entitled, 'An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes, approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

"And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management, and disposition of such vessels and of all other vessels heretofore or hereafter acquired by the United States. The power herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation or through any other corporation organized by it for such purpose."

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover \$3,000. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of three thousand dollars (\$3,000).

Opinion.

GRAHAM, *Judge*, delivered the opinion of the court:

This suit grows out of a contract for services on the part of the plaintiff in superintending the construction and carrying to satis-

41 factory completion according to the terms and conditions of the contract certain ships and barges in a shipyard owned by the defendant, for which the defendant was to furnish the capital, and to pay all the expenses, the plaintiff to provide and maintain an organization and the necessary force. The various sums mentioned in paragraph 9 of the contract to be paid by the defendant, including \$6,000 each for constructing 10 barges, were to be in consideration of the faithful performance of the contract and "in doing to the satisfaction of the owner all the work which the owner may order to be done in and upon said shipyard * * *, it being definitely understood that the fee herein provided is for any and all work on the yard which the owner may order as herein provided, as well as on hulls and barges."

The original contract contained the following provision:

"Provided, however, that if for any reason whatsoever the owner hereafter deems it inadvisable to proceed with the construction of any of the aforementioned hulls or barges, and notifies the contractor to that effect in writing, the contractor shall comply with the order of the owner in that regard, with an obligation on the owner, however, to substitute other hulls or barges of different design or size, which it is agreed the contractor shall construct under the terms and conditions hereof, for a fee to be determined by the owner, but which shall be in proportion to the fees herein to be paid, according to the character and design of the substituted boat."

The contract was dated July 18, 1918. On October 26, 1918, the defendant ordered the plaintiff in writing to stop the work of construction on 8 of the 10 barges named in the contract. The work under the original contract as far as the construction of the 10 barges was concerned called for completion of the last barge by September 1, 1919, so that at the time of this cancellation about one-fourth of the time to be devoted by the plaintiff to the superintendence of the construction of these barges had elapsed. No work had been commenced on the barges except work on certain frames for one of the barges. All of the material had been ordered but only a part of it had arrived on the yard. Some months later about one-third of the material was delivered to the yard owing to the fact that the order for it could not be canceled. The yard itself and the organization was in a position, under the direction of the plaintiff, to proceed with the work.

It will be seen that the defendant had a right to stop the work on the 8 barges, as it did, and that in so doing there was no breach of the contract. However, in case it did stop the work on these barges it assumed "an obligation" to substitute other hulls or barges of different design and size, which it was agreed the contractor should construct under the terms and conditions of the contract "for a fee to be determined by the owner, but which shall be in proportion to the fees herein to be paid according to the character and design of the substituted boat."

The defendant failed to substitute other barges and the contractor

proceeded to complete the work on the remaining two barges, the two Ferris hulls, and those hulls which were partly completed at the time the contract was entered into. Thereafter by reason of the failure of the defendant to substitute other hulls or barges for the said 8 barges on which work was stopped, the plaintiff
42 asserted a claim for a fee of \$6,000 for each of said canceled barges, making a total of \$48,000, which it is claimed was due under the contract. The defendant in consideration of this claim made the plaintiff an offer of \$12,000 as a compromise settlement and final adjustment of it, which offer the plaintiff refused to accept. As stated, the work called for by the contract was otherwise completed and the plant dismantled. On April 14, 1920, some months after it had been dismantled, the parties entered into a supplemental contract by which the original contract as to these 8 suspended barges was "terminated, canceled, and annulled."

The plaintiff under this supplemental contract was paid \$5,810 for certain expenditures claimed to have been made by it and the defendant assumed an obligation to settle and arrange all commitments and all matters under subcontracts and to adjust all claims and demands. It also thereunder paid the contractor the sum of \$9,000 "as an advance payment on account of fees for barges which are hereby canceled," and the plaintiff, it was understood and agreed, reserved "unto itself the right to sue the owner for such damages in the form of said fees for canceled barges which are claimed by the contractor in addition to the \$9,000," the owner agreeing to pay whatever sum was adjudged to be due the contractor.

It is plain that there was no breach of this contract by the defendant in stopping the work, which it had a right to do. The breach of the contract was in failing to fulfill the obligation to substitute other hulls and barges, and it therefore follows that the plaintiff's claim for damages grows out of the breach of this obligation and that the amount of the plaintiff's damages is fixed by the loss growing out of the failure to fulfill this obligation.

How have these damages been proven? It is provided that in case other hulls or barges are substituted the defendant shall have the right to determine the fee, which fee is to be in proportion to the fees to be paid in the contract "according to the character and design of the substituted boat." As no boats were substituted this method of fixing the fee gives no assistance in reaching a determination of the amount due the plaintiff. It is clear that the amount due the plaintiff, had this obligation been fulfilled, would not have been the fee fixed by the original contract. Its compensation was fixed upon another basis. It is also clear that as the plaintiff is suing for damages for breach of the contract it must prove its damages and can not rely upon the \$6,000 stated in the contract as proof.

Is there any proof in this record of the damages caused by the breach? The plaintiff relies solely upon the \$6,000 stated in the contract as proof of the amount of damages. It is clear that this was not the amount to be paid if the defendant fulfilled its obligation to supply other barges, and it can not therefore be relied upon as the measure of recovery if the obligation was not fulfilled. We are of

the opinion that there is no proof in the record of the damages caused by the breach.

So far as the recovery of damages as for a breach of the contract is concerned it is thus apparent that there can be none. But there is room for the assumption that the Fleet Corporation in canceling this contract as to the eight barges was proceeding under the act of June

15, 1917, rather than under the cancellation clause of the
43 contract, and that its fixing of \$12,000 as the amount properly to be paid the plaintiff was a fixing of just compensation under that act.

It is true that the supplemental contract refers to the \$9,000 to be paid as "an advance payment on account of the fees for the barges which are hereby canceled," but in correspondence with reference to the matter, after the plaintiff had indicated its refusal to accept \$12,000 in settlement, the claims board of the Fleet Corporation informed the plaintiff that it would make a careful investigation of the matter in order to arrive at the proportion of the fees the plaintiff was entitled to receive based upon the work performed and that it "would then be allowed to accept 75 per cent of such award and sue in the Court of Claims for the remainder." The amount paid was 75 per cent of the award and the procedure outlined was proper only under the act referred to.

Upon this theory the Fleet Corporation having determined that \$12,000 was due the plaintiff of which 75 per cent was paid and accepted by plaintiff as a partial payment, and the facts failing to show that it is entitled either to more or less than said sum the plaintiff should have judgment for \$3,000, and it is so ordered.

Hay, Judge; Downey, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

44

V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the tenth day of April, A. D. 1922, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff, as aforesaid, is entitled to and shall have and recover of and from the United States the sum of three thousand dollars (\$3,000).

By THE COURT.

45

VI. Plaintiff's Application for and Allowance of an Appeal.

From the judgment entered by the Court of Claims in this cause on the 10th day of April, 1922, the claimants, Henry Freygang and Albert A. Trocon, Partners, trading as The Midland Bridge Company, hereby make application for and give notice of an appeal to the Supreme Court of the United States.

KING & KING,
Attorneys for Claimant.

Filed June 29, 1922.

Ordered: That the above appeal be allowed as prayed for.
June 29, 1922.

EDWARD K. CAMPBELL,
Chief Justice.

46

Court of Claims.

No. 34735.

HENRY FREYGANG & ALBERT A. TROCON, Partners, Trading as The
Midland Bridge Company,

v.

THE UNITED STATES.

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of the case; of the findings of fact, conclusion of law and opinion of the court by Graham, J.; of the judgment of the court; of claimants' application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City, this 10th day of July, 1922.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 29,030. Court of Claims. Term No. 480. Henry Freygang and Albert A. Trocon, partners doing business under the firm name of The Midland Bridge Company, appellants, vs. The United States. Filed July 12th, 1922. File No. 29,030.

(6984)

8

HEN
P
n
PA

FILED

FEB 8 1923

WM. R. STANSBURY
CLERK

Supreme Court of the United States.

October Term, 1922.

HENRY FREYGANG and ALBERT A. TROCON,
Partners, doing business under the firm
name of THE MIDLAND BRIDGE COM-
PANY, *Appellants*,

v.

THE UNITED STATES.

} No. 480.

Appeal from the Court of Claims.

BRIEF FOR APPELLANTS.

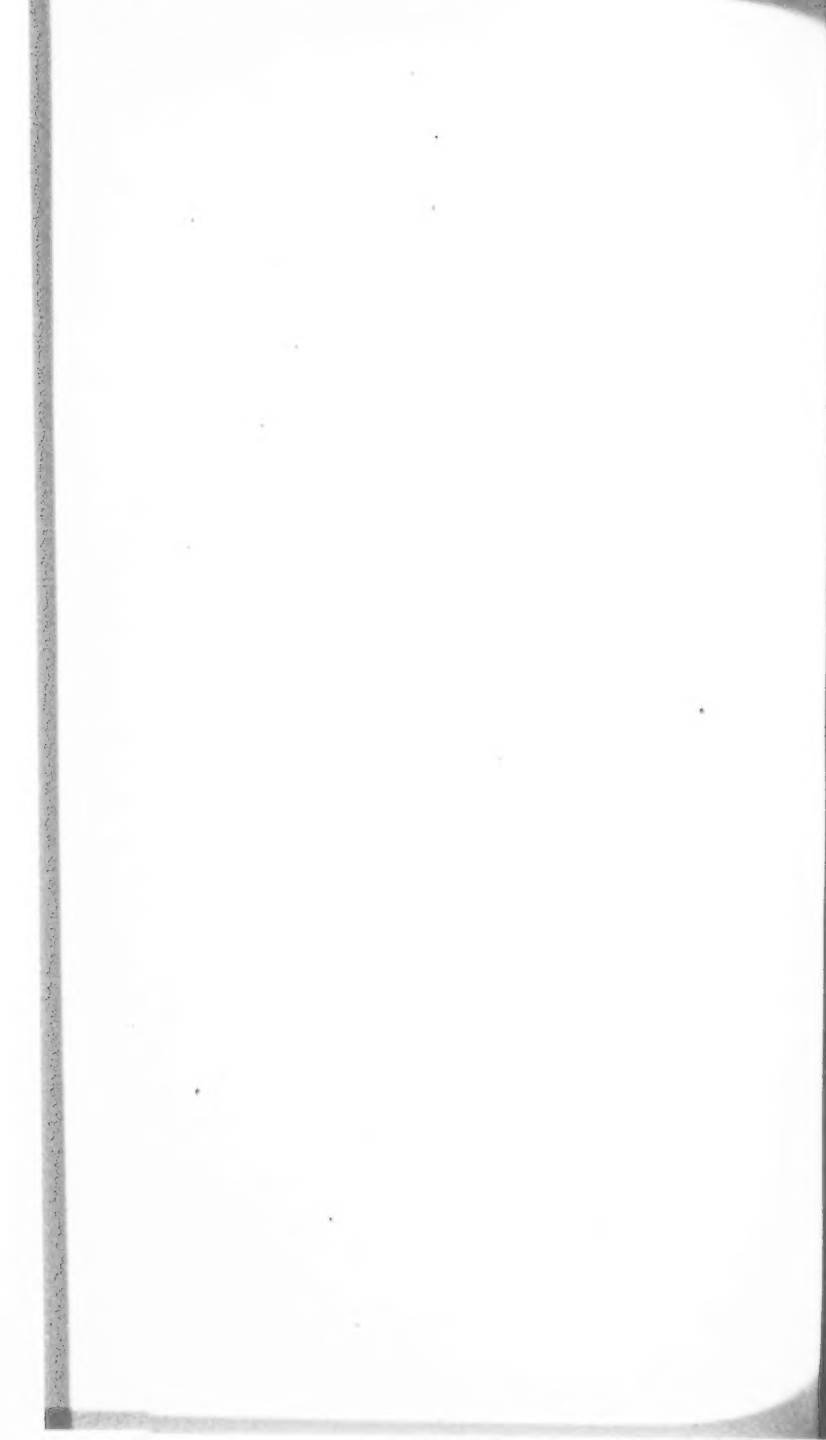
GEORGE A. KING,
WILLIAM B. KING,
GEORGE R. SHIELDS.
Attorneys for Appellants.

TABLE OF CONTENTS.

I. STATEMENT OF THE CASE	1
Contract of July 20, 1917	1
Contract of July 16, 1918	2
Contract of April 14, 1920	5
Authority for Making Contracts	6
The Opposing Contentions	9
II. ASSIGNMENT OF ERROR	10
III. BRIEF OF ARGUMENT	10
Scope of Act of June 15, 1917	10
Law Unnecessary in Case of Public Con- tracts	13
Requisitioning of Contracts	13
Power to Modify U. S. Contracts	16
Contract Right to Modify	17
The Contract a Compromise	18
A Valid Agreement of Settlement	19
Claim Liquidated by Parties	20
CONCLUSION	22
Appendix	
Congressional Debates on bill which be- came act of June 15, 1917, Ch. 29, 40 Stat. 182	23

TABLE OF CASES.

Binns <i>v.</i> United States, 194 U. S. 486, 495	12
Duplex Co. <i>v.</i> Deering, 254 U. S. 443, 447	13
Hart <i>v.</i> Pennsylvania Railroad Co., 112 U. S. 331	21
Lowrey <i>v.</i> Hawaii, 206 U. S. 223	17
Murray <i>v.</i> Charleston, 96 U. S. 432, 445	16
United States <i>v.</i> Corliss Engine Co., 91 U. S. 321	19, 20
United States <i>v.</i> St. Paul, etc., 247 U. S. 310, 318	12



Supreme Court of the United States.

October Term, 1922.

HENRY FREYGANG and ALBERT A. TROCON,
Partners, doing business under the firm
name of THE MIDLAND BRIDGE COM-
PANY, Appellants, } No. 480.
v.
THE UNITED STATES.

Appeal from the Court of Claims.

BRIEF FOR APPELLANTS.

I. STATEMENT OF THE CASE.

CONTRACT OF JULY 20, 1917.

By the first of three contracts made between the parties, dated July 20, 1917, not fully contained in the record and not sued on, but the substance of which is set out in the next contract, record, pp. 4-20, the appellants agreed to construct six wooden hulls according to the terms and conditions set forth in that contract. Under that contract the appellants in the performance thereof had been required by orders of the owner to make changes in plans and specifications for which and for additional reasons the appellants alleged they were damaged and suffered losses amounting approximately to \$136,000 "the just and fair settlement of which it is believed will be impossible and will lead to dissatisfaction, disputes and delays" (Exhibit A, record, below middle p. 4).

For this and other reasons it was the desire of both parties to cancel the contract of July 20, 1917, to make a new contract to complete the work remaining to be done under the contract of July 20, 1917, and for doing certain additional work (record, foot p. 4). Said contract of July 20, 1917, was therefore cancelled July 16, 1918 (record, top p. 5, Art. I, Par. 1).

CONTRACT OF JULY 16, 1918.

This contract is set out in full as an exhibit to the petition (pp. 4 to 20) and is the contract here sued upon.

After cancelling the contract of July 20, 1917, the appellants acknowledge reimbursement for all expenditures made and full satisfaction of all payments due under the contract of July 20, 1917, and waive all rights to receive any profit or remuneration whatsoever for services performed or work done under that contract (rec. top p. 5, Art. I, Par. 2).

There is a full waiver of all damages and claims of every kind (Art. I, Par. 3, near middle of p. 5 of record), as well as of all claims to ownership in the hulls and in the plant, machinery, tools, equipment, etc., with some exceptions (Par. 4, record, p. 5). The owner agrees to pay \$60,000 if and when the original six hulls are completed and accepted, one-sixth of said sum, or \$10,000, to be paid to the contractor as each of said hulls is completed and accepted by the owner (Par. 5, rec. pp. 5, 6). A further payment is made for certain items amounting to nearly \$20,000 (Par. 6, p. 6).

The contractor is to complete the six hulls partly completed (Art. II, Par. 2, near foot p. 6) and also to complete two wood hulls suitable for cargo-carrying steamers of an estimated deadweight capacity of 3,500 tons (foot p. 6).

The contractor is also to construct under specifications attached ten complete 3-masted wooden schooner barges of 2,500 tons deadweight capacity (Par. 4, top p. 7).

Article II ends with the following paragraph which is the one here involved (rec. near top p. 7):

"Provided, however, that if for any reason whatsoever the Owner hereafter deems it inadvisable to proceed with the construction of any of the aforementioned hulls or barges, and notifies the Contractor to that effect in writing, the Contractor shall comply with the order of the Owner in that regard, with an obligation on the Owner, however, to substitute other hulls or barges of different design or size, which it is agreed the Contractor shall construct under the terms and conditions hereof for a fee to be determined by the Owner, but which shall be in proportion to the fees herein to be paid, according to the character and design of the substituted boat."

Delivery dates are specifically provided for in Art. 4 (rec. pp. 7, 8), as to the original six hulls, the two Ferris type hulls, and the ten barges (Art. IV, foot p. 7, top p. 8).

Article VII (pp. 9, 10) provides for the payment of the actual cost of the work, the elements of cost being distinctly defined.

In addition to the actual cost of the work so defined, the contractor was to receive a fixed fee on certain of the vessels to be constructed as follows (rec. p. 11, Art. IX):

"Contractor's Fee.

"In consideration of the faithful performance of this agreement by the Contractor, the Owner shall pay the Contractor for services in doing, to the satisfaction of the Owner, all the work which the Owner may order to be done at and upon said yard, as herein provided, and for completing the construction of said two Ferris

type hulls, the sum of \$8,000 per hull, and for constructing the ten barges as herein provided, the sum of \$6,000 per barge for each of said ten barges, said fee to be paid as to each hull and barge respectively when the same is delivered to and accepted by the Owner, and in addition thereto, shall pay to the Contractor one-half of the saving effected if Contractor builds said two additional Ferris type hulls at an average actual cost under \$360,000.00, the estimated cost thereof per hull, and said \$360,000.00, it being definitely understood that the fee herein provided is for any and all work on the yard which the Owner may order as herein provided, as well as on hulls and barges; that the Contractor in consideration of the compromise settlement herein made, shall complete the original six hulls now under construction without fee or remuneration of any kind; that the said purchase price of \$60,000.00 for Contractor's interest in said yard and said reimbursement of \$19,240.32 herein agreed upon, and said fee on new hulls and barges as herein provided, and the amount which the Contractor may earn by building said Ferris hulls for less than \$360,000.00 each, shall be all the remuneration of any kind whatsoever which the Contractor shall receive hereunder, excepting any larger fee that may be paid for substituted hulls or barges of a different type or design as provided in Article II hereof."

Other provisions of this specific and complete contract require no special mention here.

It is found as a fact that appellants proceeded with the work under the new contract of July 16, 1918, until October 28, 1918, when notified that said contract was cancelled and ordered to stop work. (Finding III, par. 1, near foot p. 25).

By immediately following communications the Owner modified this order of October 28th by making it apply only to eight of the ten barges called for by the contract and notified the appellants that otherwise the contract was in full force and directed them to proceed with the

work not cancelled, which work was later completed by the appellants (Finding III, par. 2, foot p. 25).

The appellants were at that time in a position to proceed with the construction of the eight barges, work on which had been ordered to be stopped, or upon barges of different character and design which might be substituted by the Fleet Corporation as provided by the contract. But at no time was any direction or permission given to the appellants to proceed with the eight barges or any substituted barges or hulls in place thereof. The action of the Fleet Corporation in reducing the number of barges was not due to any fault on the part of the appellants (Finding IV, top p. 26).

CONTRACT OF APRIL 14, 1920.

By this contract (record, pp. 20-23) the two previous contracts were recited and it was stated that the appellants had presented claims for fees on account of the suspension of work on the eight barges.

After other provisions, it was provided (p. 22):

"Article V.

"The Owner shall pay to the Contractor the sum of nine thousand (\$9,000) as an advance payment on account of fees for the barges which are hereby cancelled."

"Article VI.

It is understood and agreed that the Contractor expressly reserves unto itself the right to sue the Owner for such damages in the form of said fees for cancelled barges which are claimed by the Contractor in addition to the \$9,000 hereinbefore provided to be paid, and if upon the final outcome of any such suit, it shall be determined that the Owner is liable to the Contractor for an amount in excess of the \$9,000 hereinbefore provided, the Owner shall pay to the Contractor such additional amount so determined."

It is found by the Court of Claims (Findings VII and VIII, rec. p. 27) that appellants asserted a claim for a fee of \$6,000 for each of said cancelled barges, making a total of \$48,000, claimed as due under the contract, upon consideration of which the appellants were offered \$12,000 as a compromise settlement and final adjustment which appellants refused to accept.

After appellants' refusal to accept the offer, defendants stated in a communication to them that it would make a careful investigation as to the proportion of work done on said cancelled barges and would arrive at a proportion of the fee that the appellants were entitled to receive based upon the portion of work performed with a view to allowing the appellants "to accept 75 per cent of the award and sue in the Court of Claims for the remainder." The amount so ascertained as an award was \$12,000 (Finding VIII, middle p. 27).

These communications and findings are not stated in the contract of April 14, 1920 (pp. 20-23).

AUTHORITY FOR MAKING CONTRACTS.

Prior to the date of any of these contracts, the President, July 11, 1917, promulgated an Executive Order, set forth in full in Finding XI (p. 28), directing "that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction."

This order was in pursuance of the act of June 15, 1917 (Chap. 29, 40 Stat. 182, 183), the material provisions of which are as follows:

"An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes.

"Emergency Shipping Fund.

The President is hereby authorized and empowered, within the limits and amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed, or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any

person owning any ship, charter, or material, or owning leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary and expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by Section 24, paragraph 20, and Section 145 of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word 'person' as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

The word 'ship' shall include any boat, vessel, or submarine and the parts thereof.

The word 'material' shall include stores, supplies, and equipment for ships and everything required for or in connection with the production thereof.

The word 'plant' shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard or dockyard and discharging terminal or other facilities connected therewith.

The words 'United States' shall include all lands and waters subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire."

THE OPPOSING CONTENTIONS.

The Court of Claims construed the above provision as to modifying, suspending, cancelling, requisitioning, etc., any contract as applying not only to the modification, suspension cancellation or requisition of contracts between private parties, but also to modifying, suspending, requisitioning, etc., of contracts between the United States and private parties.

Having found therefore that \$12,000 had been ascertained as just compensation by the Fleet Corporation acting as the President's agent, and that \$9,000 thereof had been paid, the Court of Claims gave judgment only for the balance of \$3,000.

The contention of the appellants, on the other hand, was and is that the provisions of the act of June 15, 1917, had exclusive reference to the requisitioning, cancelling, etc., of contracts between private parties

and did not refer to the cancellation of a contract between the Government and a private party. It was therefore claimed on behalf of the appellants that they were entitled to recover the full fees of \$48,000, that is, fees on the eight cancelled barges at the rate of \$6,000 a barge, less the \$9,000 paid under the agreement of April 14, 1920, making the balance claimed \$39,000.

This is claimed as the compensation specially agreed upon by the parties, and therefore the "just compensation" fixed by the contract to cover any cancellation thereof, partial or entire. This suit is for the sum stated.

II. ASSIGNMENT OF ERROR.

The appellants assign for error the following rulings of the Court of Claims:

1. That said court construed the provisions of the act of June 15, 1917 (Chap. 29, 40 Stat. 182), under the heading "Emergency Shipping Fund" as authorizing the United States to "modify, suspend, cancel or requisition any contract" made by the United States and not as authority merely to "modify, suspend, cancel or requisition" contracts made between private parties.

2. That said court failed to give judgment in favor of the appellants for the amount of its fixed fees for the completion of the eight barges amounting to \$48,000, subject to a credit of \$9,000 paid under the settlement agreement of April 14, 1920, in the sum of \$39,000.

III. BRIEF OF ARGUMENT.

SCOPE OF ACT JUNE 15, 1917.

From what has been said it will be seen that this case presents the broad question of the scope and effect of the provision entitled "Emergency Shipping Fund" in the Military and Naval urgent deficiency appropriation

act of June 15, 1917 (Chap. 29, 40 Stat. 182, 183, *ante*, pp. 7-9).

The act in question is one of a series of statutes relating to ships and war material passed from time to time during the war with Germany and even somewhat antedating it.

The first of such acts was the Naval appropriation act of March 4, 1917 (Chap. 180, 39 Stat. 1168).

By the provisions of this act under the heading "Naval Emergency Fund" (pp. 1192, 1193) similar provisions as to ships and war material were made authorizing the President "to modify or cancel any existing contract."

The several reports (all of the 65th Congress, 1st Sess.) on H. R. 3971 which ultimately became the act of June 15, 1917, are House Report No. 36, original report; Senate Report No. 41, original Senate Report; House Report No. 61, House report on this very Senate amendment here involved; House Reports Nos. 67, 70 and 74, all of them conference reports, the last two dealing with this very amendment. In none of them is there any suggestion that this was intended as more or other than requisitioning or commandeering legislation.

Moreover in a letter written by the Secretary of the Navy to the President of the Senate while this very bill was pending and urging the grant of a broad commandeering power, the very question of vessels under contract by their owners to private parties was thus referred to (Senate Doc. No. 31, 65th Cong. 1st Sess.):

"Sir:—Referring to my previous letter on the above subject, I have to again call your attention to the absolute necessity of this department being authorized to commandeer the necessary sea tugs to tow small craft to be used for patrol purposes abroad. These vessels

can not proceed under their own power, and the Government has no tugs available, nor can it, without the authority to commandeer purchase the necessary tugs. The owners have contracts which would render them liable to penalties for the violation thereof under any other conditions than the tugs being commandeered by the Government."

By the act of April 22, 1918 (Chap. 62, 40 Stat. 535), the act of June 15, 1917, which we are here considering was amended by adding a new provision authorizing the President "to take possession of, lease or assume control of" any interurban railroad, and providing as in the act of June 15, 1917:

"The President may exercise the power and authority hereby vested in him through the several departments of the Government, and through such agency or agencies as he shall determine from time to time."

By the naval appropriation act of July 1, 1918 (Chap. 114, 40 Stat. 704), it was provided (pp. 719, 720) that the President might place an order, modify or cancel any existing contract for the building, production or purchase of ships or war material, and that whenever he did cancel, modify or requisition a contract just compensation should be determined by the President and paid.

Further provisions were made in the same direction by the deficiency act of November 4, 1918 (Chap. 201, 40 Stat. 1020, 1022).

None of these statutes have any relation to contracts made with the United States itself.

The debates in Congress on the act of June 15, 1917, so far as they were the expression of the members in charge of the bill, are admissible and proper guides to the interpretation of the statute. (*Binns v. United States*, 194 U. S. 486, 495; *United States v. St. Paul*, etc.,

247 U. S. 310, 318; *Duplex Company v. Deering*, 254 U. S. 443, 447.) If any weight is to be attached to the expressions made by the leaders of Congress when this bill was under consideration, there can be no doubt that it was not intended by Congress that this legislation should apply to public contracts made by the United States itself, but only to private contracts between private individuals. Extracts from these debates are given as an appendix hereto, *post*, pp. 23-31.

LAW UNNECESSARY IN CASE OF PUBLIC CONTRACTS.

If the act were intended as authorizing the modification, suspension or cancellation of existing or future contracts of the United States, it was wholly unnecessary. In the case of *existing* contracts, one party to a contract is always at liberty to modify his contract by agreement with the other or to break it absolutely, subject to the legal consequences of such an act. In the case of *future* contracts, such contracts could be made to embody whatever terms in that behalf the circumstances of the time required. An authority to modify, suspend or cancel contracts was necessary only in the case of strictly private contracts, but a change in existing law was not the appropriate way to modify the contracts of the United States.

REQUISITIONING OF CONTRACTS.

The requisitioning of contracts between private parties for ships and war material was practiced on a large scale by the United States during the world war. One of the best instances that can be given of this practice is shown by the arbitration of the claims of Norwegian citizens having contracts with American shipyards for the construction of vessels in the course of

execution at the time of the entry of the United States into the world war.

The Hague arbitral tribunal decided in such cases that there was a complete requisitioning not only of the ships themselves but of the contracts also. The full text of the award is contained in Senate Document No. 288, 67th Congress, 4th Session.

It is there stated (pp. 9, 10):

“For some time before the declaration of war the question of requisitioning ships by the United States had been considered and the fact that early in 1917 a large proportion of the shipyards in the United States was engaged with contracts for foreign shipowners led to various proposals and negotiations into which it is unnecessary to enter here. On the 4th of March, 1917 (after the severance of diplomatic relations between the United States and Germany on February 3rd, 1917), a Naval Emergency Fund Act was passed (ch. 180, 39 Stat. 1168, 1192, 1193). This Act authorized and empowered the President, ‘in addition to all other existing provisions of law’ within the limits of the appropriation available, ‘to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind and quantity usually produced or capable of being produced by such person.’ Such orders were given precedence over all other orders, and compliance was made obligatory. In the case of non-compliance, the President was authorized to ‘take immediate possession of any factory * * * or of any part thereof.’ The President was furthermore empowered, under the same penalty ‘to modify or cancel any existing contract for the building production, or purchase of ships or war material,’ to place an order for the whole or any part of the output of a factory in which ships or war material were being built or produced, and to ‘requisition and take over for use or operation by the Government any factory, or any part thereof.’ In all cases where these powers were

exercised, provision was made for 'just compensation' to be determined by the President, with the customary provision for an appeal to the courts.

Then on June 15, 1917, two months after the declaration of War, further important powers were given to the President by the Emergency Shipping Fund Provision of the Urgent Deficiencies Act."

(Here follows the text of the act of June 15, 1917, set forth, *ante*, pp. 7-9).

"Up to the date of this Act, though different proposals had been mooted, no definite action as regards requisitioning ships or contracts for ships had been taken" (p. 11).

* * * * *

"The order contained in the letter of August 3rd expressly requisitioned not only the ships and the material, but also the contracts, the plans, detailed specifications and payments made, and it even commandeered the yards (depriving them of their right to accept any further contracts). In spite of this the United States have contended that there was no requisition, except of 'physical property' and have strongly maintained that the word 'contract' in the letter of 3rd of August only referred to commitments for material" (p. 11).

The tribunal stated as its decision (Senate Doc. 288, p. 26):

"The United States intended to 'take' and have 'taken' in fact, the contracts under which the fifteen hulls in question were being constructed by American Shipbuilders in 1917. These contracts were the property, or created it, and what the United States call 'physical property' is only one of the elements or aspects of the 'property' under the municipal law of the United States, as well as under the law of Norway and other States. It is common ground that, in the absence of any treaty, the Norwegian owners of these contracts were protected by the fifth amendment of the Constitution of

the United States against any expropriation not necessary for public use, and that they are entitled to just compensation if expropriation occurs."

Nearly \$12,000,000 was allowed by that tribunal as the value of the contracts requisitioned or appropriated by the United States.

From this it will be seen that there is ample room for the operation of the provisions of the act of June 15, 1917, as applied to the requisitioning or cancellation of private contracts, without construing it as an act regulating public contracts of the United States.

POWER TO MODIFY U. S. CONTRACTS.

In *Murray v. Charleston*, 96 U. S. 432, the city of Charleston had issued certain stocks or bonds obligating the city to pay interest thereon at prescribed rates. Under a later ordinance taxing real and personal property, the interest due on bonds belonging to *Murray*, a non-resident, was reduced by the amount of taxes assessed against such bonds and he brought suit for the amount thus withheld. In sustaining his right to recover, this court, speaking through Mr. Justice Strong, said, p. 445:

"The truth is, States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons. Hence, instead of there being in the undertaking of a State or city to pay, a reservation of a sovereign right to withhold payment, the contract should be regarded as an assurance that such a right will not be exercised. A promise to pay, with a reserved right to deny or change the effect of the promise, is an absurdity."

In *Lowrey v. Hawaii*, 206 U. S. where a change in basic law was urged as a sufficient justification for breach of contract, the court said (p. 223):

"It is no defense that the government's policy has changed. It can not so release itself from its engagements."

In no case of contract between shipyards and private individuals could the United States, any more than any other third party, assume, without special authority of law or agreement with the contracting parties, to take over the rights or liabilities of either of such parties. The war needs of the government imperatively demanded that all facilities then engaged in private work be diverted to work of a public character and the act of June 15, 1917, was enacted to make such a diversion possible. The act had nothing to do and was not intended to have anything to do with contracts made by or on behalf of the government as a contracting party. The use of the word "requisition" shows that the authority granted related to private and not to public contracts. The United States might modify, suspend or cancel its own contracts, but even under this legislation, if it applies to government contracts at all, the United States could not "requisition" for its own that which it already had.

By every sound rule of construction, and in the light of the debates in Congress when this law was in course of enactment, it must be concluded that the act of June, 1917, conferred on the United States no special right or authority to modify, suspend or cancel any such contract as that now in suit.

CONTRACT RIGHT TO MODIFY.

The contract, Article II, rec. p. 6, after describing the work to be done had this proviso, p. 7:

"Provided, however, that if for any reason whatsoever the Owner hereafter deems it inadvisable to proceed with the construction of any of the aforementioned hulls or barges, and notifies the contractor to that effect in writing, the Contractor shall comply with the Order of the Owner in that regard, with an obligation on the Owner, however, to substitute other hulls or barges of different design or size, which it is agreed the Contractor shall construct under the terms and conditions hereof, for a fee to be determined by the Owner, but which shall be in proportion to the fees herein to be paid, according to the character and design of the substituted boat."

This provision is clear and unambiguous. Whether or not the act of June 15, 1917, is to be construed as authorizing generally the modification or suspension of existing or future contracts, public as well as private, on payment of just compensation therefor, the contracting parties here specially agreed on another rule of conduct, namely, that the United States might modify or suspend this contract at its election, but that in such case the contractors would be given other work affording an equivalent compensation or fees. In other words, they specifically agreed that the subject-matter of the contract might be changed, but that the consideration therefor, or compensation, should remain constant in any event.

THE CONTRACT A COMPROMISE.

The contract of July 16, 1918 (rec. pp. 4-20), was not a new and independent contract, but a compromise and settlement of numerous questions and disputes that had arisen under an earlier contract. The \$6,000 per barge, fixed as the measure of the contractor's compensation (Art. IX, p. 11) was not alone their compensation or fee for supervising the work of constructing said barges,

but included their compensation for the relinquishment of rights under the earlier contract (Article IX, Rec. p. 211):

"It being definitely understood that the fee herein provided is for any and all work on the yard which the Owner may order as herein provided, as well as on hulls and barges; that the Contractor in consideration of the compromise settlement herein made, shall complete the original six hulls now under construction without fee or remuneration of any kind; * * *"

This accounts for the agreement of the parties that in event of cancellation of any part of the work the contractor should be given other work affording an equivalent fee. In other words, the \$48,000 that was to be paid as fee or compensation for supervising the construction of eight barges was the fee not alone for supervising those barges but for completing the six hulls previously completed, for relinquishment of claims under the earlier contract, etc.

A VALID AGREEMENT OF SETTLEMENT.

In *United States v. Corliss Engine Company*, 91 U. S. 321, it was held that where the Secretary of the Navy was authorized by law to make a contract for vessels or their machinery his power extended by necessary implication to a contract of compromise and settlement.

The court said (p. 323):

"It would be a serious detriment to the public service if the power of the head of the Navy Department did not extend to providing for all such possible contingencies by modification or suspension of the contracts, and settlement with the contractors."

"When a settlement in such a case is made upon a full knowledge of all the facts, without concealment, misrepresentation, or fraud, it must be equally binding upon the government as upon the contractor; at least, such a settlement can not be disregarded by the gov-

ernment without restoring to the contractor the property surrendered as a condition of its execution.

"But aside from this general authority of the Secretary of the Navy, under the orders of the President, he was, during the rebellion, specially authorized and required by acts of Congress, either in direct terms or by specific appropriations for that purpose, to construct, arm, equip, and employ such vessels of war as might be needed for the efficient prosecution of the war. In the discharge of this duty, he made the original contracts with the claimant. The completion of the machinery contracted for having become unnecessary from the termination of the war, the secretary, in the exercise of his judgment, under the advice of a board of naval officers, suspended the work. Under these circumstances, we are of opinion that he was authorized to agree with the claimant upon the compensation for the partial performance, and that the settlement thus made is binding upon the government."

The situation here was similar. Rights had been acquired under the original contract of July 20, 1917. It was deemed to the interest of the government to settle those rights and to provide for other vessels more needed by the government. In compromise and settlement of all obligations under a previous contract it was agreed that some of the vessels originally provided for should be completed free of any fees or charge of completion, while the appellants should construct other vessels and should receive for the same certain fixed fees.

CLAIM LIQUIDATED BY PARTIES.

The effect of this contract was to obligate the government, by way of compromise, to pay the appellants certain agreed sums, subject to an option to substitute other work for the barges. That option it failed to exercise. This left the contract as a substantial liquidation of all prior controversies binding the government

to pay the sums therein provided. The cancellation provision thus in effect became a provision for damages liquidated and agreed upon in advance, which the government could modify, not by mere cancellation of the barges, but only by a cancellation followed by a substitution of other work.

In *Hart v. Pennsylvania Railroad Co.*, 112 U. S. 331, 341, it was held:

"The subject-matter of a contract may be valued, or the damages in case of a breach may be liquidated in advance. In the present case, the plaintiff accepted the valuation as 'just and reasonable.' The bill of lading did not contain a stated valuation according to the nature of the animal. It does not appear that an unreasonable price would have been charged for a higher valuation."

But it is said that it was not exactly the same size or character of boat or the same fee that was provided to be substituted for the original ones. In the opinion of the Court of Claims, it is suggested (near foot p. 30) that the fees to be substituted shall be "according to the character and design of the substituted boat."

The answer to this proposition is that whatever uncertainty there is, is caused by the default of the government in not substituting some other boats or barges. The court can not infer that they would have been different. The contract indeed seems to contemplate that the substitution would have been of larger boats or vessels.

In Article IX "Contractor's Fee" (p. 11) providing for the \$6,000 fee for each barge, provision is made that the reimbursement for expenses "and said fee on new hulls and barges as herein provided" and a certain amount of bonus provided for by the contract for the construction at less than the estimated cost of the

Ferris hulls, "shall be all the remuneration of any kind whatsoever which the contractor shall receive hereunder, excepting any larger fee that may be paid for substituted hulls or barges of a different type or design in Article II hereof."

This seemed to contemplate that the fees for the substituted barges might be greater than the fees provided for in the contract of 1918.

No other measure of fees having been substituted appellants are entitled to stand upon the measure of fees named in the contract. No other rate or amount having been substituted, the question whether a smaller one might have been substituted by the government in its discretion becomes purely academic.

CONCLUSION.

This case is one depending on express provisions of valid contracts. It is in no sense a case of requisitioning or commandeering such as is covered by the act of June 15, 1917, or other commandeering statutes as a case of ascertainment of "just compensation" as for requisitioned property. Even if it were such, the just compensation to which the appellants are entitled is the amount expressly stipulated in their contract.

The judgment of the Court of Claims should be reversed and the case remanded with instructions to enter judgment for the entire amount claimed, \$39,000.

GEORGE A. KING,

WILLIAM B. KING,

GEORGE R. SHIELDS,

Attorneys for Appellants.

APPENDIX.

Congressional debates on H. R. 3971, which became the Act of June 15, 1917, ch. 29, 40 Stat. 182.

The following extracts from debates thereon reported in Vol. 55 of the Congressional Record at the pages indicated, shed an interesting light on the question of what Congress understood and meant its provisions to imply.

Mr. Nelson, now Chairman Senate Judiciary Committee (p. 2511), said:

"Mr. President, this bill contains some very unusual and far-reaching provisions. * * * It authorizes the President—which, of course, in this case means the Shipping Board—

'(b) Within the limits of the amounts hereby authorized, to modify, cancel, or requisition any existing contract for the building, production, or purchase of ships or material; and if any contractor shall refuse or fail to comply with the contract as so modified or requisitioned, the President may take immediate possession of any factory of such contractor or any part thereof without taking possession of the entire factory, and may use the same for such times and in such manner as he may consider necessary or expedient.'

"It not only authorizes the Shipping Board to take possession of the ships which have been partially completed, to commandeer them, but it authorizes the board to change and modify contracts which have been made between the shipbuilder and the man who has a ship in process of construction."

Mr. Underwood (of the Committee on Appropriations) (p. 2513):

"We have to get the ships now building off the ways and operate the shipyards with three shifts in order to expedite the construction.

"If we want to accomplish anything for our allies, we have got to send them supplies, and we have got to get the ships to carry them. If we want to maintain an

army on the battlefield of France, we must have ships to carry them there and ships to carry their supplies. If we want to maintain navies on the seas, we must have fuel ships and supply ships. I want to say to Senators that, if this war is to be a success, the first question and the last question to be considered is ships, ships, and more ships. We can not start the war without ships, and we can not successfully conclude it without ships."

On page 2515, the following remarks are recorded:

"Mr. CALDER. Can the Senator tell me what is to be the policy of our Government toward these ships that are under construction?"

"Mr. UNDERWOOD. In regard to taking these ships?"

"Mr. CALDER. Yes.

"Mr. UNDERWOOD. I can not speak by the card on that. I shall be glad to give the Senator such information as I have. I know that our Government wants to clear the ways of the ships that are on them—that is the most important question—so that they can be used. Most of these contracts have been made on an eight-hour basis, with one shift a day. Our Government wants to put the work on a two or three shift basis, so that we will expedite the building of the ships and make as great a use of the ways as possible. This bill provides for expediting the building of these ships. My information is, although I do not speak with any authority, that those ships that are nearing completion will be allowed to be completed in their usual course and go to the corporations or men or countries that have already contracted for them; but ships that are just beginning, and may occupy the ways for a considerable time, will probably be commandeered under this bill, in order that the Government may handle those ships, expedite them as rapidly as possible, and clear the ways to put their shipping in. That is the information I have.

* * * * *

"Mr. CALDER. Some of the shipbuilders I have talked to tell me that the effect of that will be to disorganize many of the yards, because it is difficult for them to conduct Government business upon this basis and conduct

private business under different conditions. It tends to add to the cost of construction, and very materially affects what we may have to pay for the ships.

"Mr. UNDERWOOD. From the evidence before the committee I do not think that power will be used. From the evidence that came before the committee I think it is clear that Gen. Goethals intended to build these ships by way of contract with the usual method, but he wants the power to accomplish the results if he can not do it the other way.

* * * * *

"Mr. KELLOGG. I was so far away that I could not hear the statement of the Senator from Alabama. Did I understand him to say that the ship contracts entered into with foreign owners that are nearly completed will not be interfered with?

"Mr. UNDERWOOD. They will not be interfered with if they are nearing completion. I will say to the Senator that my understanding is, from the testimony given before the committee, that most of these ships that are on the ways belonging to foreign nations are really for the Government of Great Britain, although the contract is not made in the name of the Cunard Co. There may be some few ships of foreign nations. If they are nearing completion, my understanding is that it is not the purpose of this Government to interfere with the contracts; but if they are not, and we have got to get the yards for the purpose of expediting matters, the contract will probably be taken over."

Page 2516:

"Mr. UNDERWOOD. I think a number of the members of the committee had grave doubt about the very question the Senator is now raising. When the bill was first under consideration it was stated before the committee by Mr. Denman, chairman of the Shipping Board, that except in the case of those ships the Government itself is using where it carries its own insurance, of course, a number of these ships are going to be let out on contracts to individuals, many of them just to go across the sea and come back again to carry their supplies. Where they are lost they are insured by the Government,

but the Government charges it to the freight and the freight is compelled to pay the cost of the ship. The statement was made before our committee, and I think it is borne out, that as far as our Government ship insurance is concerned we have not lost any money; we are making money out of it; because the statement was made before the committee that there is not a war insurance risk company in the world that is not to-day making a profit, because they magnify the risk in making the rates. Therefore we would not lose the ships.

"But I will say to the Senator, if that was all there was involved in the question I would be disposed to agree with the position he has taken in the matter and let the English Government take its own ships and run them and let them stay on the ways until they are finished; let the British Government have its own ships and we take ours. But in the final conclusion of the situation Gen. Goethals said to us that it was of the utmost importance to carry out this project that he should have the power to take over these English contracts, if he wanted to do it, to expedite this work. We do not compel him to do it.

"Mr. WEEKS. Let me ask the Senator if all the shipyards in the United States are not now working at full capacity.

"Mr. UNDERWOOD. Our information is that they are not; that they are working at full capacity on a single shift, an eight hours a day shift; but what our Government wants to do is to make them work on two or three shifts a day."

Page 2518:

"Mr. KNOX. I doubt, sir, whether it will ever be necessary for the President of the United States to commandeer any shipyard, any rolling mill, any steel works, or any other factory in the United States to expedite this work, but it is a good thing in the event of the unforeseen happening that he shall have that power.

"Mr. President, over and beyond all that, it is a good thing to have it go out to the nations of the world that

the Congress of the United States is going to be true to its pledge written in the war resolution that all the resources of this country are pledged to victory for our arms."

Page 2524:

"Mr. BRANDEGEE. I did not quite understand the statement the Senator made. Under the provision of the bill, as I understand it, the President has the right to modify any existing contract with the shipyards, and he has the right also to commandeer the yard if they do not furnish proper terms. Under that, even if the British contract did provide that the vessel should be constructed upon an eight-hour day, the President could modify the contract and say, 'You must run three shifts.' In that case, we certainly would get the British ships a good deal quicker than we would get them if the British contract were allowed to creep along to completion according to the contract.

"Mr. SMOOT. It is the intention of Gen. Goethals to force the building of ships."

Page 2525:

"Mr. SMOOT. Does the Senator really believe that if the President of the United States should ask England to expedite the building of these ships England would not do it?

"Mr. UNDERWOOD. Well, I have no doubt of England's doing it; but there are private contracts which exist between the shipbuilding companies of this country and the Cunard Steamship Line. When Gen. Goethals tells that it is of the utmost importance that he be given this power, I do not think he wants the power simply for the purpose of trying to coerce the British Government when he says that the British Government is prepared and ready to cooperate with him in this respect.

"There is something else behind it, and there is something else behind the fact that we have to fight here to get the power to commandeer these ships. I do not refer to the Senator from Utah, of course."

Senator Martin, in charge of the bill (p. 2527) said:

"I trust that the Senate will vote down the amendment that is offered by the Senator from Utah, the object of which is to take away from Gen. Goethals the discretion which the bill, as reported, gives him to take over these ships if he thinks it well to do so. He says he will not take over those that are nearly completed, but those that have a long-distant date for delivery he wants to take over, because he wants the ways. He not only wants these ships quickly constructed by expediting their construction so that we may have the use of them, but he wants to put more ships on those ways. I appeal to the Senate to give him the power that he asks, and to give him the power which the President of the United States, who is the Commander in Chief of our Army and our Navy, says is of vital importance to the successful conduct of this war on the part of the United States.

Page 2529:

"Mr. UNDERWOOD. The committee's bill is perfectly fair as it is written. It provides that any ship that is commandeered or any shipyard or anything else that is commandeered shall be paid for at a reasonable price to be agreed on between the President or those acting for him and the owner. If they can agree on a reasonable price, that is the end of it; but if they can not agree on a reasonable price, what is the result? The President is to pay the owner 75 per cent of what the President thinks is a reasonable price, and then the owner can go into court and sue for whatever he wants, and the court, with all the facts before it, will ascertain what is a reasonable price and give it to him."

Mr. Fitzgerald, Chairman House Committee on Appropriations, on reporting with amendments the bill as amended in the Senate, said (p. 3015):

"Mr. FITZGERALD. Mr. Speaker, the provision in the Senate bill provides authority for the construction,

purchase, or acquisition of approximately 3,000,000 tons of shipping in a period of 18 months. The proposed amendment which the House is asked to adopt is simply the rearranging the Senate amendment in more logical form and differs from it in four principal respects. First, it gives power to suspend contracts, as well as to cancel, modify, or requisition. In the Senate provision there was no authority to suspend a contract between private parties which might interfere with the Government requisitioning or requiring work to be done."

Page 3015:

"Mr. FITZGERALD. This legislation is of a very radical, unique, and unusual character. It confers the most comprehensive powers ever proposed upon the President of the United States. It authorizes him to requisition the entire output of a factory, a portion of a factory, to take over ships, to cancel contracts, to assume contracts, to suspend contracts, to operate the ships; and when the powers given here are exercised, provision is made to make just compensation for the taking over. Authority is given to the President to ascertain in a summary manner what the just compensation shall be, and if that compensation so determined shall not be satisfactory to the person affected then he shall be paid 75 per cent of that sum and given a right to proceed against the United States in the Court of Claims to recover such additional sum as will make just compensation."

Page 3018:

"Mr. FITZGERALD. They expect to get all of the trained mechanical help needed, and, if necessary, under this bill the President will have the power to suspend contracts where labor is utilized that can be utilized in shipbuilding, in order to get that labor diverted to the shipping work. That is one of the purposes of authorizing the suspension of contracts."

Page 3022:

Mr. CHARLES B. SMITH. Suppose a steel company is

now manufacturing steel for some purpose that is not in connection with the war and not for the purpose of carrying on the war, and suppose the Government wants to cancel contracts of that character and take the steel for ships or to build cars. Should not the Government have the right to cancel those contracts?

"Mr. LENROOT. Absolutely, and that far I am not making the slightest objection.

"Mr. CHARLES B. SMITH. Does this do more than that?

"Mr. LENROOT. Yes; it does. For instance, a building is being erected in my town. The contractor owns the material. The Government desires not a pound of that material, but under this power it can suspend the erection of that building in my city or your city for the sole purpose of driving those men out of employment and seeking to compel them voluntarily to seek employment elsewhere."

Pages 3023 and 3024:

"Mr. SHERLEY. Mr. Speaker, the gentleman from Wisconsin (Mr. Lenroot), it seems to me, takes rather an extreme view touching the construction to be placed upon subsection (b) of the proposed amendment to Senate amendment numbered 2, and whether his view be extreme as to the law I feel certain that his view is unwarranted as to the intent. I do not think anything has happened which warrants the assertion that this administration or any other administration, desires to close down factories for the purpose of putting men out of employment in order to compel them to work for the Government of the United States. But this situation is going to confront us: Beyond question we are going to see, not only in connection with the steel industry but in connection with many other industries, a total inability to perform the work for the Government that is necessary in the prosecution of the war, and at the same time perform the ordinary work that is performed in peace times, and no man when it comes to an issue of priority will hesitate for a moment as to the need and the right of the Government to claim that

priority for that work which is essential for it to successfully prosecute this war.

* * * * *

"The only effect of that would be to make further evident and apparent that the purpose of taking over or suspending or modifying a contract is because the performance of that contract necessarily interferes with the doing of something—in this instance the building of ships—necessary for the prosecution of the war; and in that way, I believe, it is easily possible to tie it within the powers that are given to Congress under the provisions of the Constitution that confer the right to declare war and necessarily prosecute it and to have all the powers that must flow from that first grant."

* * * * *

Page 3024:

"Mr. DEMPSEY: Now, what that means, and what any court in the world would construe it to mean, is simply this: That if a plant is using material and labor for some other purpose, and that plant and that labor may be utilized for shipbuilding, then the President under this section would have the right, instead of allowing them to complete the labor which they have in hand and which is not useful for this great purpose which the Nation has in view, to go in and say, 'We will utilize this labor and this material, and instead of building a store or house we will use it for the purpose of shipbuilding.' That is all it means. We will turn this particular thing over. We will not send these men 1,500 miles away to seek labor elsewhere. But in the language of the section we will simply utilize this labor and this material where they are for shipbuilding. That is all it says."

In the Supreme Court of the United States

OCTOBER TERM, 1918.

HENRY FREYGANG AND ALBERT A. Trocon, partners, doing business under the firm name of the Midland Bridge Company, appellants, v. THE UNITED STATES, RESPONDENT.	}	No. 480.
---	---	----------

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

Respondent accepts the statement of the case set forth in appellant's brief herein, pages 1 to 10, inclusive, with the following addition: The case of *Russell Motor Car Company v. United States* is set forth in the transcript of the record in the Supreme Court of the United States, October term, 1922, No. 485.

The instant case was decided upon the theory of the Court of Claims in the *Russell Motor Car* case, which case is set forth in the transcript of record in the Supreme Court of the United States, October term, 1922, No. 485. The instant case is to be heard in connection therewith.

ARGUMENT.

The claimant in its brief herein has set forth four specifications of error, all of which said specifications are answerable by the theory set forth in the brief for respondent in the case of *Russell Motor Car Company v. The United States, supra*, based upon the rule of law that contracts with the United States are so made with reference to the established law of the land, and should be so understood and construed unless otherwise clearly indicated by the terms of the agreement.

Wilson v. Rousseau, 4 How. 646, 685.

The West River Bridge Co. v. Dix, 6 How. 507, 532.

United States v. Boisdore, 11 How. 63, 88.

Rees v. Watertown, 19 Wall. 107, 121.

Ogden v. Saunders, 12 Wheat. 213, 297.

The power of the President under the act of June 15, 1917 (40 Stat. 182), was delegated to the Shipping Board by Executive order under date of July 11, 1917. (Rec. p. 28.)

Counsel for the United States believe that the opinion, in the case of the *Russell Motor Car Company, appellant, v. United States, respondent*, October term, 1922, No. 485 (Rec. pp. 131-144), of the Court of Claims, delivered by Downey, Judge, and concurred in by Hay, Judge, Graham, Judge, Booth, Judge, and Campbell, Chief Justice, is sound and adopts the reasoning contained therein as its argument against each and every specification of error set forth by claimant in its brief.

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,
Solicitor General.

ROBERT H. LOVETT,
Assistant Attorney General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

ALEXANDER H. McCORMICK,
Special Assistant to the Attorney General.



TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 740.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 18, 1922.

(29,290)

(29,290)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 740.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Record from the Court of Claims.....	1	1
Petition	1	1
Contract between Albert & J. M. Anderson Mfg. Co. and the United States, July 23, 1917.....	5	3
History of proceedings.....	13	8
Argument and submission.....	13	8
Findings of fact.....	14	9
Conclusion of law.....	18	13
Judgment	19	14
Petition for and order allowing appeal.....	19	14
Clerk's certificate.....	20	14

1

Court of Claims.

No. 34332.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY, a
Corporation,

vs.

THE UNITED STATES.

I. Petition and Amendment Thereto.

On December 23, 1919, the plaintiff filed its original petition. On October 11, 1920, by leave of court, the plaintiff filed an amendment to the petition, so that the same now reads as follows:

Petition.

The petition of the Albert & J. M. Anderson Manufacturing Company respectfully represents:

1. Petitioner is a corporation created under the laws of the State of Maine, with its principal place of business and manufacturing plant in the City of Boston, Massachusetts, and prior to the making of the contract hereinafter mentioned, was engaged in the business of manufacturing electric railway, and light and power, specialties, and also in the manufacture of ordnance for the United States Army and the manufacture of brass cartridge cases for the United States Navy and for the British Government.

2. On the 23d day of July, 1917, petitioner entered into a contract (No. 31192) with S. McGowan, Paymaster General of the Navy, for the manufacture and delivery of 250,000 brass cartridge cases, at the price of \$5.55 per case, the whole aggregating the sum of \$1,387,500; the cases to be manufactured from materials furnished by the United States. A copy of the said contract is hereto annexed.

3. Petitioner thereafter entered upon the performance of the contract and up to and upon December 19, 1918, was manufacturing and delivering the cases required under the contract. On that day the Navy Department, presumably because of the cessation of hostilities between the United States and the German Empire, ordered petitioner to discontinue certain of the work then in progress under the contract, and notified it that the Bureau desired to cancel 50,000 of the cases. Subsequently the Navy Department cancelled the contract, so far as the further manufacture and delivery thereunder was concerned, except only that thereafter, up to and including the month of March, 1919, it received cases which, since December 19, 1918, had been completed to bring the number up to two hundred

thousand, and also received sixty-six cases in addition thereto. There have thus been manufactured and delivered to the United States under said contract 200,066 of the cases required. And there has been no further manufacture or delivery of cases under said contract. So that petitioner, by such action on the part of the United States, was prevented from manufacturing and delivering the remaining 49,934 cases called for by the contract.

3 4. The actual cost of the manufacture of the cases by the petitioner was the sum of \$3.625 per case, including in this sum a fair estimate of the expense which would be incurred by the petitioner in providing new tools from time to time, and the maintenance of the equipment installed. Consequently, petitioner's net income on each case would have been the sum of \$1.925, being the difference between the contract price and the actual cost of manufacture, which cost per case would have been the same had petitioner been allowed to complete its contract. So that, by reason of the unauthorized cancellation, pro tanto, of the contract by defendant, petitioner has incurred a loss of \$96,102.97, being the amount which petitioner would have realized as net income over actual cost, and thus applicable to reimburse it for expenditures or equipment theretofore purchased and manufactured to enable it to perform the work called for by the contract, and for interest on the investment. This sum the petitioner would have received had it been permitted to manufacture and deliver the remaining 49,934 cases at the contract price; and it is rightfully and justly entitled to recover from the defendant, as damages for the unauthorized cancellation of said contract, the said sum of \$96,102.97.

5. Petitioner, having declined to acquiesce in such cancellation, was requested by the Navy Department to furnish a statement of what would be a fair adjustment of its loss in the premises. Thereupon, after minute and careful inquiry into all the details of the cost of manufacture, petitioner reported its loss to be the sum of \$1.76 per case, the whole aggregating the sum of \$87,883.84. That report the Department refused to accept, and thereafter offered 4 petitioner the sum of \$17,629.12 in satisfaction of its claim which offer petitioner declined.

6. Petitioner is the sole owner of the claim herein presented. No assignment of any part thereof, or interest therein, has been made to any one.

7. Petitioner and its officers have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

8. Petitioner is justly entitled to recover the amount herein claimed, \$96,102.97, after allowing all just claims, credits and offsets and prays judgment in that amount.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
By JOHAN M. ANDERSON,
President.

CHAPMAN W. MAUPIN,
Of Washington, D. C.;
RUSSELL, MOORE & RUSSELL,
Of Boston, Mass.,
Attorneys for Petitioner.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

Johan M. Anderson makes oath and says that he is the President of petitioner, Albert & J. M. Anderson Manufacturing Company; that he has read the foregoing petition by him subscribed and knows the contents thereof, and that he verily believes the statements therein contained to be true.

JOHAN M. ANDERSON.

5 Subscribed and sworn to before me, the undersigned, a notary public in and for the county and State aforesaid, this sixteenth day of December, 1919.

PAUL M. FOSS,
Notary Public.

My commission expires October 19, 1923.

Contract No. 31192.

Opening, 3rd July, 1917.

This Contract, of two parts, made and concluded this 23rd day of July, 1917, A. D., by and between Albert & J. M. Anderson Mfg. Co., 289-293 A Street, of Boston, in the State of Mass., party of the first part, and the United States, by the Paymaster General United States Navy (Chief of the Bureau of Supplies and Accounts), acting under the direction of the Secretary of the Navy, party of the second part, Witnesseth, That, for and in consideration of the payments hereinafter specified, the party of the first part, for itself and its personal and legal representatives, doth hereby covenant and agree to and with the party of the second part, as follows, viz:

1. That it, the said party of the first part, will furnish and deliver, at its own risk and expense, the following classes of articles, at the place and within the time stated for each class, and at the price set opposite each item as appended hereto, respectively:

Contract 31192.

General Specifications and Conditions.

Cartridge cases to be manufactured in accordance with "Specifications O. D. 150," and in accordance with the following drawings:

4-inch 50-cartridge case, 15875.

3-inch 50-cartridge case, 16426.

1-pounder cartridge case, 13095.

The above drawings and specifications may be obtained upon application to the Commandant, Navy Yard, Washington, D. C.

6 Bids.—Under Bid B the Government will furnish Grade 1 copper in the form required by the contractor, in accordance with "Specification 46C5a," issued by the Navy Department Feb. 1, 1917, at the following rates:

For each 4-inch cartridge case, 12.075 pounds.

For each 3-inch cartridge case, 5.563125 pounds.

For each 1-pounder cartridge case, 0.3105 pound.

Under Bid C the Government will furnish Grade 1 copper as specified under Bid B, and will also furnish A zinc in accordance with "Specifications 47Z1c." issued by the Navy Department, Feb. 1, 1915, at the following rates:

For each 4-inch cartridge case, 5.425 pounds.

For each 3-inch cartridge case, 2.499375 pounds.

For each 1-pounder cartridge case, 0.1395 pounds.

NOTE.—The total quantity of metal that will be supplied by the Government under Bid B is 13,273,875 pounds of copper, and under Bid C the same quantity of copper and 5,963,625 pounds of zinc.

It will be noted that the metal to be furnished by the Government under Bids B and C represents the quantity of metal in the finished case as per the Washington Navy Yard shop practice (slightly greater than the drawings), and that the contractor must assume all losses in the brass mill, and must utilize the scrap.

As it may be impracticable for the Government to furnish exactly the quantities of copper and zinc specified, any necessary adjustments will be made by allowance to the contractor or a reduction to the Government of the difference involved at the rate of 30 cents per pound for the copper and 11½ cents per pound for the zinc.

Bidders must submit the information called for on the blank lines below:

Form of Copper Required.—Two notch Ingots.

Name of Factory to Which Copper and Zinc are to be Delivered.—American Brass Co.

7 Address.—Ansonia, Conn., or Buffalo, N. Y.

Date Delivery of Copper and Zinc will be Required.—August 1, 1917.

It is understood and agreed that the Government may, at its option, require delivery to be made at such navy yard or yards as may be designated when the material is ready for shipment. As the destination

tion can not be specified now, arrangements will be made to prepare a supplementary contract covering the additional cost of transportation from the bidder's establishment to the destination desired by the Government. In case the material can be shipped on a Government bill of lading at a lower freight rate than can be secured by the contractor, the inspector of ordnance in charge of the inspection will arrange for shipment under Government bill of lading.

NOTE FOR NAVAL INSPECTOR.—As soon as destination is known, advise Bureau of Supplies and Accounts, in order that supplementary contract can be prepared.

Inspection to be made at place of manufacture unless otherwise directed by the Bureau of Ordnance.

When the bidder and the manufacturer are the same, the exact address of the manufacturing establishment should be given and not the office address.

All handling of material necessary for purposes of inspection shall be performed and all test specimens necessary for the determination of the qualities of materials used shall be prepared and tested at the expense of the contractor.

If inspection is authorized at the place of manufacture, shipment made without authority from the Government inspector may result in return, at contractor's expense, of material to place of manufacture for inspection.

If contract is sublet, the contractor and subcontractor shall furnish the inspector representing the bureau concerned in their district quadruplicate copies of all orders placed with manufacturer for materials, stating, when possible, the purpose of each item ordered and the specifications for the same. In all cases these orders shall contain the number of the original contract of which these constitute sub-orders.

In connection with the inspection of the material, if incorrect information is given, thereby causing one or more useless trips by the inspector, the Government reserves the right to charge the expense of such useless trips to the contractor, and further inspection at the mills may be denied the contractor, at the option of the Government.

Bid A.—

Name of manufacturer: Albert & J. M. Anderson Mfg. Co.

Address: 289-293 A Street, Boston, Mass.

Class 182.—(Bu. Req'n 144, Ord.-App'n: "Ammunition for Auxiliaries and Merchantment."—Sch. 1285.)

To be delivered f. o. b. cars or on wharf at or near contractor's works as follows: Deliveries to commence about 120 days after date of contract or receipt of copper and zinc from the Government, and to be completed within 450 days thereafter.

Deliveries to commence not later than January 1, 1918, and continue at the rate of at least 1,000 cases per working day until contract is complete.

Other terms of delivery will receive consideration.

Bids are requested as follows:

Bid A.—On the basis of the contractor furnishing all copper and zinc required.

Bid B.—On the basis of the Government furnishing Grade 1 copper at the rate specified elsewhere, the contractor to furnish the zinc.

Bid C.—On the basis of the Government furnishing Grade 1 copper and Grade A zinc at the rates specified elsewhere.

9 The price quoted under Bids B and C is to be a toll charge or differential. Note that the Government furnishes the copper and zinc as specified.

Stock Classification No. 4.

Item 1. 250,000 cartridge cases for 4-inch 50-caliber guns, each \$5.55, total, \$1,387,500.00.

For Bid C.

2. It is hereby mutually and expressly covenanted and agreed by and between the parties hereto that the article or articles to be furnished or services to be performed under this contract shall conform in all respects to the requirements of the specifications hereunto annexed, which specifications, the "Instructions, Deliveries, and Conditions," printed on the proposal of the said party of the first part, shall be deemed and taken as forming a part of this contract with like operation and effect, as if the same were incorporated herein; and in any case where the specifications do not explicitly provide to the contrary, all workmanship and materials entering into the manufacture or construction of any article or articles under this contract, shall be of the very best commercial quality and manufacture; and said article, articles, or services shall upon delivery or completion, be subject to inspection and examination by the officer or officers authorized by the said party of the second part to inspect and examine the same; and no article furnished or services performed under this contract shall be accepted until it or they shall have been inspected and approved by such officer or officers; and any of said articles not so approved shall be removed by the said party of the first part at his own expense, and within ten days after notification.

3. It is further covenanted and agreed, as aforesaid, that time is an essential element of this contract, and that, if the said party of the first part shall fail to make delivery of any or all of the articles or materials or to perform any or all of the services herein contracted for, in conformity with the conditions and requirements of the contract, and within the time or times prescribed, the said party of the second part will be damaged thereby; and the amount of said damages is hereby fixed and agreed to in advance, as liquidated damages, and not as penalty, and the said party of the second part shall make deductions from the contract price accordingly, as follows, viz.:

10 For each day's delay, Sundays and holidays excepted, until satisfactory delivery or performance shall have been made, or until such time as the party of the second part may procure the same as herein-

after provided, at the rate of one-twentieth of 1 per cent of the contract price, the deductions, however, not to exceed in any case 10 per cent of the stipulated value of the articles or materials not so delivered, or of the services not so performed; rejection of deliveries or performance not to be considered as waiving deductions: Provided, That no liquidated damages shall be deducted for such period after the expiration of the time or times prescribed for delivery or performance, as, in the judgment of the party of the second part, shall equal the time that, either in the beginning or in the prosecution of the deliveries or services contracted for, shall have been lost on account of any cause for which the United States is responsible, or on account of strikes, riots, fire, or other disaster, delays in transit or delivery on the part of transportation companies, or any other circumstances beyond the control of the contractor, but such circumstances shall not be deemed to include delays on the part of subcontractors in furnishing materials when such delays arise from causes other than those herein specified: And provided further, that the question whether delays are due to causes herein specified shall be determined by said party of the second part.

4. It is further covenanted and agreed that if the said
11 party of the first part shall fail in any respect to perform the contract the same may, at the option of the United States, be declared null and void, without prejudice to the right of the United States to recover for defaults therein or violations thereof, or the said party of the second part may purchase or procure in such manner and from such person or persons as he deems proper, paying such price therefor as may be necessary in order to procure the same, such of said articles or materials of the kind specified as near as practicable, or procure the performance of such services, as the said party of the first part shall fail to deliver or perform as required, and may demand and recover from the said party of the first part the difference between the price so paid therefor and the price stipulated in the contract; and the amount of such difference shall be paid by the said party of the first part to the said party of the second part on demand.

5. It is further covenanted and agreed that the said party of the first part shall indemnify the United States, and all persons acting under them, for all liability on account of any patent rights granted by the United States that may be affected by the adoption or use of the articles herein contracted for.

6. It is further covenanted and agreed that in carrying out the provisions of the contract no person shall be employed who is undergoing sentence of imprisonment at hard labor which has been imposed by a court of the United States, or of any State, Territory, or municipality having criminal jurisdiction; that the contract is upon the express condition that no Member of or Delegate to Congress, nor any person belonging to or employed in the naval service is, or shall be, admitted to any share or part therein or to any benefit to arise therefrom except as a member of a corporation; and that any

transfer of the contract, or of any interest herein, to any person or party by the said party of the first part shall annul the same, so far as the United States is concerned.

12 7. And this contract further witnesseth, That the United States, party of the second part, in consideration of the foregoing stipulation, do hereby covenant and agree, to and with the party of the first part, as follows, viz:

That upon the presentation of the customary bills, and the proper evidence of the delivery, inspection, and acceptance of the said article, articles, or services, and within ten days after such evidence shall have been filed in the Bureau of Supplies and Accounts, there shall be paid to the said Albert & J. M. Anderson Mfg. Co., or to its order, by the Navy Pay Officer, at Washington, D. C. (Disbursing Office), the sum of One million three hundred eighty-seven thousand five hundred (\$1,387,500.00) dollars, or the sum found due under this contract: Provided, however, That no payments shall be made on any one of said classes until all the articles or services embraced in such class shall have been delivered or performed and accepted, except at the option of the party of the second part.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

ALBERT & J. M. ANDERSON MFG. CO.
J. M. ANDERSON,

Pres.

[L. S.]

S. MCGOWAN,
*Paymaster General U. S. Navy, Chief of
the Bureau of Supplies and Accounts.* [L. S.]

Signed and sealed in the presence of

GEO. F. VEDELER,

As to Party of the First Part.

E. W. SMITH,

As to Paymaster General U. S. Navy.

13

II. *History of Proceedings.*

On February 24, 1920, a general traverse was filed under Rule 34.

On December 14, 1920, on motion made therefor by the defendant (and consented to by the plaintiff) the general traverse was withdrawn and a demurrer to the petition was filed.

On February 1, 1921, the demurrer was argued and submitted.

On February 21, 1921, the Court filed an order overruling, without prejudice, the defendant's demurrer.

III. *Argument and Submission of Case.*

On November 6, 1922, this case was argued and submitted on merits by Messrs. Arthur W. Russell and Chapman W. Maupin, for the plaintiff, and by Mr. Alexander H. McCormick, for the defendant.

14 IV. *Findings of Fact and Conclusion of Law.*

Entered November 13, 1922.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Plaintiff, the Albert & J. M. Anderson Manufacturing Company, is a corporation duly created and existing under the laws of the State of Maine.

II.

At the outbreak of the recent war in Europe, plaintiff was a general machinist and manufacturer of electrical appliances, with main office and plant in the city of Boston, Massachusetts. Prior to the making of the contract now in suit plaintiff manufactured for the British Government 200,000 four and a half inch howitzer brass shell cases and for the United States 24,000 three-inch "15-pounder" brass shell cases.

III.

And also prior to the making of the contract now in suit, to wit, on May 7, 1917, plaintiff entered into contract with the Navy, No. 29855, for the manufacture of 65,000 four-inch, 50-caliber, brass shell cases at the price of \$7.65 per case, the Government furnishing the copper and plaintiff the spelter for the cases. Plaintiff increased its shop equipment of hydraulic presses, pumps, and tools for the performance of this contract, which contract was duly completed before deliveries began under the contract now in suit, and payment for the 65,000 cases has been made to plaintiff in full.

IV.

15 The contract now in suit, No. 31192, for the manufacture of 250,000 four-inch, 50-caliber, brass shell cases, "Class 182.—(Bu. Req'n 144, Ord.—App'n: 'Ammunition for Auxiliaries and Merchantmen.'—Sch. 1285)" at the price of \$5.55 per case, was awarded to plaintiff as the lowest bidder after due advertisement, according to law, and was entered into on the 23d day of July, 1917, between plaintiff and the United States through S. McGowan, Paymaster General of the Navy, the Government to furnish all the materials for the manufacture of the cases, which were precisely the same in size and kind as those provided for in contract No. 29855, above mentioned. A copy of the said contract is annexed to the petition herein and by reference is made a part of this finding.

V.

In order to be able to deliver the shell cases as speedily as required by contract No. 31192 plaintiff was obliged to and did enlarge its plant by the purchase of adjoining property and by the installation of additional hydraulic presses, pumps, and accumulator.

VI.

Plaintiff duly entered upon the performance of contract No. 31192 and up to and on December 19, 1918, was manufacturing and delivering the cases required. On that day plaintiff received the following telegram from the Navy Department:

"Bureau desires to cancel fifty thousand four-inch cartridge cases, and directs company immediately to stop casting and rolling brass not required.

"RALPH EARLE,
"Chief of Bureau, Ordnance, Navy."

And shortly thereafter plaintiff received the following letter from the department:

Navy Department,

Bureau of Ordnance.

Washington, D. C., Dec. 21, 1918.

Subject: Contract 31192, 250,000 4"/50 cartridge cases—Reduction in quantity.

Reference: (a) Bu. Ord. telegram of December 19, 1918.

SIRS:

In reference (a) the bureau informed the company that it desired to cancel 50,000 4"/50 cartridge cases of those to be delivered under the above-mentioned contract, and directed the company immediately to stop casting and rolling such brass over that required.

The bureau wishes to be advised if a reduction in the contract quantity, as indicated above, will be agreeable to the company without further adjustment. If such reduction is not agreeable, it is requested that the company forward, as soon as practicable, for the consideration of the bureau, a statement of what the company believes to be a fair adjustment.

If more brass than that necessary to complete the reduced number is in process, the bureau desires to be informed immediately as to the amount thereof.

Very truly yours,

C. C. BLOCH,
Captain, U. S. N., Acting Chief of Bureau.

16 Plaintiff by letter of January 7, 1919, declined to accept the proposed cancellation of the contract unless it should be paid the difference between the cost of production of the residue of the 250,000 shell cases and the contract price of such residue.

VII.

After receipt of said letter and telegram ordering discontinuance of work plaintiff, having a considerable amount of material in process, was told by defendant to continue work until it had 200,000 cases finished. When plaintiff stopped work there were a few cases finished in excess of the 200,000. Of these defendant took 66, so that the total number of cases manufactured and delivered was 200,066, all of which were paid for in full by defendant without deductions on any account. And plaintiff, in consequence of said order of the Navy Department, was prevented from manufacturing and delivering the remaining 49,934 cases called for by the contract.

VIII.

Pursuant to request made by the Navy Department by letter of February 4, 1919, plaintiff on February 28, 1919, submitted an estimate of the cost of production of the cases at the time the work was stopped. Nearly six months after submission of this estimate plaintiff received the following letter from the Navy Department:

Navy Department,

Bureau of Supplies and Accounts,

Washington, D. C., 15 August, 1919.

Subject: Contract 31192, relative to partial cancellation.

Albert & J. M. Anderson Mfg. Co.,
289-923 A Street, Boston, Mass.

Sirs:

After a careful consideration of your claim for damages, based on the partial cancellation of the contract mentioned, it has been decided to make you the following offer:

The Navy will pay you \$17,629.12, which sum represents that part of amortization of special facilities on the canceled portion of the contract, as follows:

Class of equipment.	Cost.	Residual value.	Net amortization.
Machines and equipment purchased..	\$48,100.93	\$10,161.11	\$37,939.82
Machines and equipment manufactured	21,821.34	5,727.04	16,094.30
Buildings and building alterations...	113,159.72	55,705.00	57,454.72
	183,081.99	71,593.15	111,488.84
Tool material.....	55,806.11	1,604.00	54,202.11
All labor and overhead.....	100,112.49	.....	100,112.49
Estimated tools to complete.....	14,365.46	.....	14,365.46
Total	362,366.05	.....	289,108.96
Less excess provided for on contract 29855 .....	.....	.....	87,336.06
Amount to be prorated on basis of deliveries.....	.....	.....	201,832.30
49934/315000 of \$201,832.30.....	.....	.....	31,904.30
Less tools to complete.....	.....	.....	14,365.46
Total amortization chargeable to canceled portion contract 31192 .....	.....	.....	17,629.12

17 You may either reimburse the Navy for excess quantities of metals received on contract 31192 and contract 29855 at the market prices prevailing at the time of settlement or deliver to the Navy the actual quantity of such excess material in kind. It is believed that a settlement on this basis will be fair and just to all concerned.

Please advise whether you prefer to reimburse the Navy for excess metals or if you would rather return said excess material in kind.

Respectfully,

W. N. HUGHES,
By Direction of the Paymaster General.

IX.

Plaintiff rejected said offer to pay it \$17,629.12, and never at any time agreed to accept said sum in satisfaction of its claims, and no part thereof was paid. Plaintiff did agree to take the excess material and pay for it or turn it over to the Government. It has since been turned over to and sold by the Navy Department.

X.

At the time of the armistice, November 11, 1918, plaintiff was ready, able, and willing to deliver the cases at the rate of 2,000 per day, provided there was no interference by "priority orders" from defendant with the delivery of brass discs to plaintiff by its subcontractor, the American Brass Company, of Ansonia, Conn. Plaintiff was then working with two shifts, 22 hours per day in every

twenty-four, but was ordered by defendant to reduce its working hours to eight hours per day, which it did. Working a single shift at eight hours per day, plaintiff manufactured and delivered the cases at a rate averaging between 800 and 900 per day, and at that rate would have completed the contract within less than 60 working days from the time it stopped work on the cases in March, 1919.

XI.

The actual cost of production of the cases by plaintiff during the last three months of its work under the contract was the sum of \$3,6254 per case, and plaintiff would have completed the remaining 49,934 cases at that rate per case if the work had not been stopped by defendant. The cost of completing said remaining cases at that rate would have aggregated the sum of \$181,030.73. The contract price of the cases was \$5.55 per case, a total of \$277,133.70. The difference between that sum and the cost of production is \$96,102.97, and plaintiff would have realized that amount as net income from the 49,934 cases if it had been permitted to manufacture and deliver the same.

XII.

The amount expended by plaintiff for special facilities for the performance of Navy contracts Nos. 29855 and 31192 was the sum of \$349,081.75 less the sum of \$73,197.15, the residual value, leaving the sum of \$275,884.60 as the amount to be amortized, of which the sum of \$43,727.71 was chargeable to the canceled portion of contract No. 31192.

18

XIII.

If plaintiff had been permitted to complete the contract, its net income from the 49,934 cases would have been 53 per cent of the cost of production, and its average net income from the entire 250,000 cases would have been slightly over 20 per cent of the cost of production. The difference between the percentage of net income from the two parts of the work would be due (1) to the fact that none of the heavy expenses for special facilities is included in the estimate of the cost of the remaining 49,934 cases, and (2) to the fact that production greatly increased, and the percentage of defective cases greatly decreased, as the work progressed and the operatives grew more and more proficient in their respective tasks.

Conclusion of Law.

On the facts found the court concludes as matter of law that the plaintiff is entitled to recover of and from the defendant the sum of forty-three thousand seven hundred and twenty-seven dollars and seventy-one cents (\$43,727.71), and judgment is directed accordingly.

V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Thirteenth day of November, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge and decree that the plaintiff as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of Forty-three thousand, seven hundred and twenty-seven dollars and seventy-one cents (\$43,727.71).

By THE COURT.

VI. Plaintiff's Application for and Allowance of an Appeal.

Comes now the claimant, by its attorney, and prays the allowance of an appeal from the judgment entered on the findings of fact herein, November 13, 1922.

CHAPMAN W. MAUPIN,
Attorney for Claimant.

Filed December 4, 1922.

Ordered: That the above appeal be allowed as prayed for.
December 11, 1922.

By THE COURT.

Court of Claims.

No. 34332.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY,
a Corporation,

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law entered by the Court; of the judgment of the Court; of the plaintiff's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Thirteenth day of December, A. D., 1922.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 29,290. Court of Claims. Term No. 740. Albert & J. M. Anderson Manufacturing Company, appellant vs. The United States. Filed December 18th, 1922. File No. 29,290.

FEB 8 1923

WM. R. STANSBURY

CLERK

SUPREME COURT OF THE UNITED STATES.

October Term, 1922.

No. 740.

ALBERT & J. M. ANDERSON MANUFACTURING CO.,

vs.

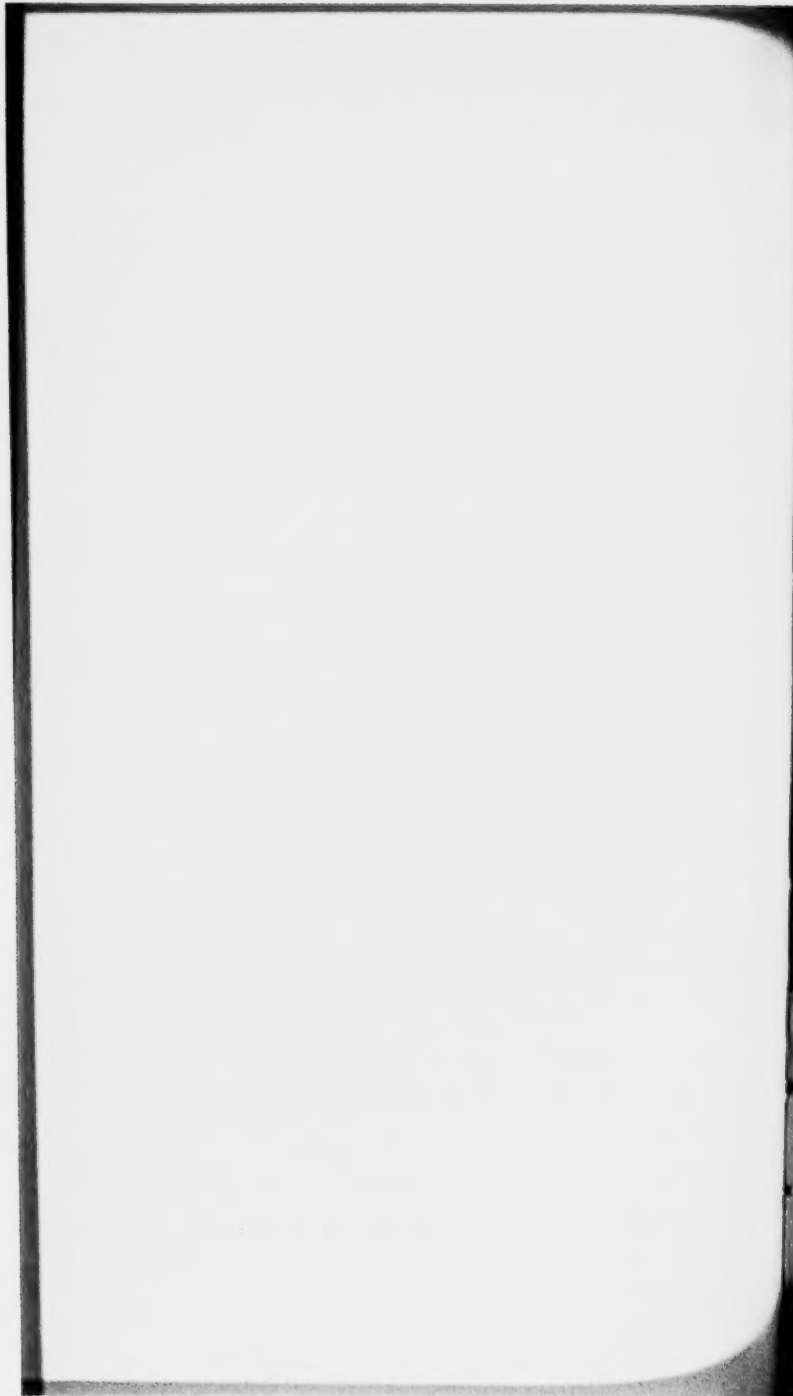
THE UNITED STATES.

APPELLANT'S BRIEF.

If the cancellation clause in the Emergency Shipping Fund section of the Act of June 15, 1917, had been really intended to apply to government contracts, what would have been its purpose? Obviously, to relieve the government from its obligation to accept vast quantities of supplies that would not be needed in case of an early or unexpected close of the war. Yet the court below does not, in any of its opinions, even hint that such was the purpose of the provision. Why? Because, under the construction put by it on the "just compensation" clause, the government would be in the position of repudiating, in part, the obligations of its "existing" contracts for supplies if it should cancel those contracts at the close of the war. The failure of the court below to refer to this phase of the case, which cannot possibly have escaped its attention, is a confession of the weakness of its position.

ARTHUR H. RUSSELL,
Of Counsel.

CHAPMAN W. MAUPIN,
Attorney for Appellant.



SUBJECT INDEX.

	<i>Page</i>
Specifications of Error.....	4
“Naval Emergency Fund”, text of.....	6
History and discussion of.....	7, 13
“Emergency Shipping Fund”, text of.....	8
History and discussion of.....	7, 17
British Statutes, notes from.....	11
Cancellation, not applicable to government contracts..	6-28
Cartridge cases, not “material”.....	28
Contract, not made under Act.....	31
“Just compensation” includes profits.....	35

TABLE OF CASES.

United States <i>v.</i> Speed.....	5, 35
United States <i>v.</i> Behan.....	5, 35
United States <i>v.</i> Purcell Env. Co.....	28, 35
Holy Trinity Church <i>v.</i> United States.....	19
The Delaware	19
Buttfield <i>v.</i> Stranahan.....	19
Binns <i>v.</i> United States.....	19
Duplex, &c., Co. <i>v.</i> Deering.....	19
Rexford, &c., Co. <i>v.</i> Moore.....	32
Langford <i>v.</i> United States.....	37
Harley <i>v.</i> United States.....	37



SUPREME COURT OF THE UNITED STATES.

October Term, 1922.

No. 740.

ALBERT & J. M. ANDERSON MANUFACTURING Co.,

vs.

THE UNITED STATES.

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

This is a suit to recover damages for the breach by the United States of an express contract between it and the claimant, by refusing to comply with the terms thereof and attempting to cancel the same, there being no cancellation clause in the contract.

The contract (Navy Department No. 31,192), entered into July 23, 1917, was for the manufacture and delivery of 250,000 four-inch brass shell cases, at the price of \$5.55 per case, the government to furnish the materials for the manufacture. On December 19, 1918, when nearly four-fifths of the 250,000 cases had been made and delivered, defendant ordered claimant to discontinue work, and shortly thereafter requested claimant to submit a statement of what it would con-

sider a fair adjustment of its loss by reason of the partial cancellation of its contract.

A prior contract (Navy Department No. 29,855) for the manufacture of 65,000 of the same cases, at \$7.65 per case, (government to furnish the copper, and claimant, the spelter), had been fully performed before deliveries under contract No. 31,192 began.

When work under contract No. 31,192 was finally stopped, claimant had delivered, and defendant accepted, 200,066 of the cases, leaving 49,934 cases which, in consequence of defendant's orders in the premises, were never made and delivered. Claimant submitted the desired statement of its loss, and about six months thereafter defendant offered to pay it \$17,629.12 in satisfaction of its claim, having in the meanwhile caused an examination of its books, records, and accounts to be made by naval accountants.

The Department arrived at this sum by amortizing the expenses incurred by claimant in providing special facilities for the performance of the two contracts, deducting from the amortized fund the sum of \$87,000, supposed to represent profits included by claimant in its bid for the first contract, pro-rating the balance between the performed and the unperformed part of the two contracts, and deducting from the amount pro-rated to the unperformed part the sum of \$14,365.46, which the Department estimated claimant would have had to expend for tools in the completion of the unperformed part of the second contract. (See tabulated statement, Rec., p. 12.)

The court below found that claimant would have realized a profit of \$96,102.97 from the uncompleted part of the contract if full performance had been allowed—that being the difference between the cost of

production and the contract price of the 49,934 cases that were not made. (Rec., p. 13, Finding XI.)

The court below found also that the amount expended by claimant for special facilities for the performance of the two contracts was the sum of \$275,884.60, of which the sum of \$43,727.71 was chargeable to the unperformed part of the second contract. This latter sum the court arrived at by refusing to deduct from the amortized fund the \$87,000 supposed to represent claimant's profits on the first contract, and by refusing to deduct from that part of the fund prorated to the unperformed part of the second contract the \$14,365.46 estimated for tools for the completion of that contract. (Rec., p. 13, Finding XII.)

Accordingly judgment was entered for the claimant in the sum of \$43,727.71, that portion of the expenditure for special facilities chargeable to the unperformed part of the contract, but no opinion was filed, as the findings of fact touching the question of measure of damages brought the case within the purview of the ruling of the court in *Meyer Scale, etc., Co. v. United States* and *Russell Motor Car Company v. United States* (not yet reported), that the "just compensation" to which claimant was entitled under the Act of June 15, 1917 (40 Stats. 182), included claimant's expenses for special facilities but excluded its claim for anticipated profits on the unperformed part of the contract. The court below made no express ruling upon the contention of the claimant that the present contract was not within the purview of the Emergency Shipping Fund Act of June 15, 1917 (40 Stats. 182). From the judgment so entered, the claimant has appealed.

SPECIFICATIONS OF ERROR.

1. The court below erred in holding that the provision in the Emergency Shipping Fund section of the Act of June 15, 1917 (40 Stat. 182), authorizing the cancellation of contracts by the President, applies to government contracts.

2. The court below erred in holding that brass cartridge cases for naval guns are "material" as that word is defined in the said act.

3. The court below erred in holding that the instant contract was made by the representatives of the President, under authority conferred by the said act.

4. The court below erred in holding that the provision in said act for "just compensation" to the contractor in case of cancellation of its contract, excluded any allowance to claimant for loss of anticipated profits on the cancelled part of the contract, and in giving claimant judgment only for the amount expended by it for special facilities on account of that part of the contract.

ARGUMENT.

Under the decisions of this court, claimant is entitled to recover in this case, as damages for the breach of its contract, the difference between the contract price of the 49,934 cases and what it would have cost to manufacture and deliver such cases, with a reasonable deduction for relief from the risks involved in claimant's obligation to complete the contract.

United States v. Speed, 8 Wall. 77, 85;
United States v. Behan, 110 U. S. 338;
United States v. Purcell Env. Co., 249 U. S.
313, 317.

We understand it to be admitted by the appellee that the Naval Appropriation Acts of March 4, 1917, and July 1, 1918, providing for the cancellation of munitions contracts by the President, and the allowance of just compensation therefor, have no application to this case—the first-named act, because claimant's contract did not exist at the date of that act; and the second-named act, because that act was passed after July 23, 1917, the date of claimant's contract, and therefore cannot be held to have been had in view by claimant at that time.

We understand that the defence rests wholly upon the provisions of the Emergency Shipping Fund section of the Act of June 15, 1917 (40 Stats. 182), authorizing the President to cancel any existing or future contract for, among other things, the "equipment" of ships, and requiring that "just compensation" be made the contractor therefor; and upon the decision of the court below, in the unreported cases of the *Meyer Scale & Hardware Company* and of the *Russell Motor Car Company* (referred to hereafter as the *Meyer* case and the *Russell* case), that such just compensation cannot include an allowance for profits lost by reason of the cancellation of the contract.

We contend that the provisions of the last-mentioned act, in the respects mentioned, have no application to this case for the following reasons:

I.

The provision of the Naval Emergency Fund section of the Act of March 4, 1917 (39 Stats. 1192) authorizing the President to cancel any "existing ~~future~~ contract" for the building, production, or purchase of ships or war material, did not, nor did the provision of the Emergency Shipping Fund section of the Act of June 15, 1917 (40 Stats. 182) authorizing the President to cancel any "existing or future contract" for the like items, apply to government contracts.

For the convenience of the court we print in the margin both of these Emergency Fund sections, together with notes from the British "Defence of the Realm" Acts and Regulations, on which those sections were modeled in part.¹

1NAVAL EMERGENCY FUND.

(Act March 4, 1917.)

To enable the President to secure the more economical and expeditious delivery of materials, equipment, and munitions, and secure the more expeditious construction of ships authorized, and for the purchase and construction of (certain naval small craft) to be expended at the direction and in the discretion of the President, \$115,000,000, or so much thereof as may be necessary, and to be immediately available.

(The paragraph omitted here provides for the construction of 20 coast submarines, and appropriates \$18,000,000 towards the cost of same.)

(a) That the word "person" as used in paragraphs (b) (c), next hereafter, shall include any individual, trustee, firm, association, company, or corporation. The word "ship" shall include any boat, vessel, submarine, or any form of aircraft, and the parts thereof. The words "war material" shall include arms, armament, ammunition, stores, supplies, and equipment for ships and airplanes, and everything required for or in connection with the production thereof. The word "factory" shall include any factory, workshop, engine works, building used for manufacture, assembling, construction, or any process, and any shipyard or dockyard. The words "United States" shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

History of the Emergency Legislation.

The "Naval Emergency Fund" section of the Naval Appropriation Act of March 4, 1917, was an amendment of the bill, H. R. 20632, 64th Cong., and was offered in the House by Mr. Padgett, chairman of the Committee on Naval Affairs, in charge of the bill. He

(b) That in time of war, or of national emergency arising prior to March first, nineteen hundred and eighteen, to be determined by the President by proclamation, the President is hereby authorized and empowered, in addition to all other existing provisions of law:

First. Within the limits of the amounts appropriated therefor, to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quality usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any such factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give to the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships or war materials so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Second. Within the limits of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limits of the amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may

stated that the amendment was prepared by himself, the Attorney General, and Assistant Attorney General Warren, and that it was taken in part from a British statute, apparently the "Defence of the Realm" Acts and Regulations, as several of the provisions are almost literal copies from those publications. (Cong.

be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof without taking possession of the entire factory, whether the United States has or has not any contract or agreement with the owner or occupier of such factory.

That all authority granted to the President in this paragraph, to be exercised in time of national emergency, shall cease on March first, nineteen hundred and eighteen.

(d) Whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

EMERGENCY SHIPPING FUND.

(Act June 15, 1917.)

1. The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or materials as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable or being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver

Rec., Vol. 345, p. 2699.) Remarks of other members of the House on the amendment appear in the same volume at pp. 2699, 2700, 3137-3145. House Committee Reports on the bill were (64th Cong., 2nd Sess.) H. Rep. No. 1392, and Conference Rep. No. 1633.

The bill was brought up in the Senate by Mr. Swanson, acting for the chairman of the Committee on

such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or materials so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph

Naval Affairs. Remarks of senators on the amendment appear in Cong. Rec., Vol. 347, pp. 4623, 4630, 4737. Senate Committee Reports on the bill were (64th Cong., 2nd Sess.) No. 1101 and Conference Rep. No. 1633.

The "Emergency Shipping Fund" section of the Military and Naval Deficiency Appropriation Act of

twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time.

Provided, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word "person" as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

The word "ship" shall include any boat, vessel, or submarine and the parts thereof.

The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.

The word "plant" shall include any factory, workshop, warehouse engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard, or dockyard, and discharging terminal or other facilities connected therewith.

The words "United States" shall include all lands and waters subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

The cost of purchasing, requisitioning, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction and the expediting of construction of ships thus under construction shall not exceed the sum of \$250,000,000, exclusive of the cost of ships turned over to the Army and Navy, the expenditure of which is hereby authorized, and in executing the authority granted by this act for such purpose the President shall not expend or obligate the United States to expend more than the said sum; and there is hereby appropriated for said purpose, \$150,000,000: *Provided*, That this ap-

June 15, 1917 (65th Cong., H. R. 3971) was offered in the Senate by Mr. Martin, chairman of the Committee on Appropriations. (Cong. Rec., Vol. 351, p. 2511). His remarks on the necessity and purposes of the measure appear at p. 2526. The remarks of other senators on the amendment appear at pp. 2511-2530. It was stated by Mr. Underwood, a member of the committee (p. 2512), that the section was a rewriting of the like paragraph of the Naval Bill of March 4, 1917 (referring to the Naval Emergency Fund section), and that the only legislation the committee put in the section was that enabling the President to commandeer ships

appropriation shall be reimbursed from available funds under the War and Navy Departments for vessels turned over for the exclusive use of those departments or either of them.

The cost of construction of ships authorized herein shall not exceed the sum of \$500,000,000, the expenditure of which is hereby authorized, and in executing the authority granted herein for such purpose the President shall not expend or obligate the United States to expend more than said sum; and there is hereby appropriated for said purpose, \$250,000,000.

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the Army or Navy, and for every expenditure incident thereto, \$5,000,000.

NOTES FROM THE BRITISH DEFENCE OF THE REALM ACTS.

The principal features of the British "Defence of the Realm" Acts and Regulations, relating to the commandeering of property and cancellation or modification of contracts, are, in substance, as follows:

1. The Admiralty or Army Council may require that the output of any factory or plant in which munitions or war supplies are produced, shall be placed at their disposal, and they may take possession of and use for naval or military purposes any such factory or plant. (5 Geo. V, ch. 8, sec. 3.)

2. It shall be a good defence to an action for breach of contract, that performance of the contract was prevented by compliance with the requirements or requisitions of the Admiralty or Army Council. (5 Geo. V, ch. 37; 7 & 8 Geo. V, ch. 25, sec. 3.)

3. A court being satisfied that, owing to any restriction imposed by or under the Defence of the Realm Regulations, any term of a contract

and shipyards. Senate Committee Reports covering the amendment were S. Rep. 41 and Conference Rep. Sen. Doc. No. 39.

The amendment was brought up in the House by Mr. Fitzgerald, chairman of the Committee on Appropriations. His remarks on the same appear in Cong. Rec., Vol. 351, pp. 3015-3024. Remarks of other members appear at pp. 3015-3024. House Committee Reports covering the amendment were H. Rep. 61 and Conference Reps. Nos. 67, 70, and 74.

cannot be enforced without serious hardship, may, on application of any party to the contract, "suspend or annul" the contract on such conditions as it thinks fit. (7 & 8 Geo. V, ch. 25, sec. 2.)

4. The prices charged in a sub-contract for war supplies or services executed after June 13, 1917, may be revised by the Admiralty or Army Council, with right of appeal to a Royal Commission appointed under the Defence of the Realm Regulations. Any reduction of such prices shall be a credit on the amount due by the government to the principal contractor. (Reg. 2BB, Defence of the Realm Manual, 7th Ed., pp. 45, 46, printed and issued by the British government.)

5. The price of the factory output of munitions, stores, etc., requisitioned by the Admiralty or Army Council, shall, in default of agreement, be determined by three judges—one from the English, one from the Scotch, and one from the Irish courts. (Reg. 7, Defence of the Realm Manual, 7th Ed., p. 78.)

6. The Shipping Controller shall have power to requisition any ship or shipyard, and to "abrogate" or "modify" any contract or class of contracts affected by the order. (Reg. 39BBB, Defence of the Realm Manual, 7th Ed., pp. 138, 139, secs. 1, 3, and 5.)

7. Provision is made for a Royal Commission to hear and report on claims to compensation for direct loss or damages incurred through exercise of powers under the Defence of the Realm Acts and Regulations. (Supplement No. 3 to Manual of Emergency Legislation, p. 367, printed and issued by the British government.)

In a page by page examination of the Defence of the Realm Manual, 7th Ed., a British government publication of Emergency War Legislation from 1914 to 1918, counsel was unable to find any provision of the statutes or regulations that could be construed to authorize the annulment, or abrogation, or cancellation, of a government contract for war material or supplies of any kind. If any such statute or regulation exists, the defence is respectfully invited to point it out.

The Naval Emergency Fund Section.

The provision of this section in relation to the cancellation of contracts, is as follows:

Second. Within the limits of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material.

The court below, in the *Russell* case (No. 485, Rec., pp. 135, 137), says that this clause applies only to government contracts, and cannot apply to private contracts, because it is not to be supposed that Congress intended to authorize anything so unjustifiable and uncalled-for as the modification or cancellation of a contract between private parties. And as that court makes its construction of the similar clause in the Act of June 15, 1917, largely dependent upon its construction of this clause, it becomes necessary for us to state the reasons why we think the court erred in its construction of this clause, and why the cancellation feature of the clause can be held to apply only to the cancellation of private contracts.

1. The act allows the President to cancel contracts "within the limits of the amounts appropriated therefor." The words quoted refer, *not to previous appropriations under which the then existing government contracts were made*, but to the appropriations, aggregating \$150,000,000, then made by the act itself as the Naval Emergency Fund. Other than those appropriations there were none anywhere to pay the cost of modifying or cancelling "any existing contract for the building, production, or purchase of ships or war material." This fully appears from the discussion between Mr. Padgett, in charge of the measure, and Mr. Mann (Cong. Rec., Vol. 345, pp. 3143, 3144) and from

the remarks of Mr. Swanson, in charge of the measure in the Senate (Vol. 347, p. 4736).

The object of the fund was thus expressed:

“To enable the President to secure the more economical and expeditious delivery of materials, equipment, and munitions, and secure the more expeditious construction of ships.”

The President could not secure “the more economical and expeditious delivery of materials, equipment, and munitions,” nor “the more expeditious construction of ships” by the cancellation of government contracts for ships or materials, but he might accomplish those purposes by the cancellation of private contracts which were at that time crowding the shipyards of the country and tying-up the government’s ship-building program.

Nor would it have been possible for the President, by the cancellation of government contracts, to transgress the limits of the appropriations made for the fund, because the cancellation of such contracts would, under the construction put by the court below on the “just compensation” clause, reduce, instead of increase, the liability of the government. If the court below was right in its construction of the act, the effect of the cancellation would have been to relieve the government from existing liabilities, not to create new liabilities, and there would have been no need to “put a curb on the President” in the latter respect.

2. If it be true that this clause was intended to apply only to government contracts, then it would appear that the sole object of the provision was to enable the government to escape a part of its liability under its *existing* contracts for the production of war ma-

terial, because the clause in terms applied only to *existing* contracts, and because the "just compensation" to the contractor could not, according to the construction of the court below, include an allowance for profits lost by the cancellation. How singular the situation that would have resulted! The legislature would have deliberately set about impairing the obligation of the *existing* contracts of the government—something that could not have been anticipated by the contractor—at the same time refusing to make the provision applicable to *future* contracts, as to which the contractor could have protected himself by taking into consideration the liability of his contract to cancellation on the "just compensation" basis without an allowance for loss of his profits. Can anyone believe that such an embarrassing construction was anticipated or intended by the legislature? How would such a construction advance the object of the provision as expressed in the preamble, "To enable the President to secure the more economical and expeditious delivery of materials"?

3. The remarks of the chairman of the House Committee on Naval Affairs, in charge of the bill, during a colloquy on the floor of the House, show that he understood the cancellation clause in question to apply to the cancellation of private contracts.² As he was

²The following discussion took place between Mr. Padgett, chairman of the Committee on ~~Appropriations~~ in charge of the bill (H. R. 20,632) and Mr. Stafford as to the proportion of the "just compensation" allowance that should be paid immediately to the contractor or owner, under the provisions of the Naval Emergency Fund section of the bill. (Cong. Rec., Vol. 347, p. 4968.) (Italics ours.)

MR. STAFFORD. The gentleman can understand that it might be better for the interest of *private contractors* that they be paid a larger proportion (than 50%).

MR. PADGETT. It may be, but they did not ask for any more, and they expressed satisfaction with this.

one of the three draftsmen of the section,³ he was in the best possible position to know what the intention of the clause was in that respect.

MR. STAFFORD. Who were these interested parties that were taken into the confidence of the conferees?

MR. PADGETT. I do not remember the name of the gentleman who was introduced to me this morning, but he said he was a shipbuilder, and he asked me if we would accept the proposal.

MR. STAFFORD. Did he have letters or credentials from the other private contractors of the country?

MR. PADGETT. If he did I did not know it. He did not disclose it.

This colloquy could have reference only to cases occurring under par. "Second" of the Naval Emergency Fund section of the bill, because none of the other paragraphs involve the rights of "private contractors". Consequently, it is clear that Mr. Padgett, the chairman of the committee in charge, understood that paragraph to apply to the cancellation of private contracts.

It is evident from the remarks of Mr. Lenroot below (Cong. Rec., Vol. 351, p. 3022), that the House was given to understand by the managers of the Naval Emergency Fund bill, that the cancellation clause of that bill was intended to apply to private contracts.

MR. CHAS. B. SMITH. Suppose a steel company is now manufacturing steel for some purpose that is not in connection with the war and not for the purpose of carrying on the war, and suppose the Government wants to cancel contracts of that character and take the steel for ships or to build cars. Should not the Government have the right to cancel those contracts?

MR. LENROOT. Absolutely, and that far I am not making the slightest objection.

MR. CHAS. B. SMITH. Does this do more than that?

MR. LENROOT. Yes; it does. For instance, a building is being erected in my town. The contractor owns the material. The Government desires not a pound of that material, but under this power it can suspend the erection of that building in my city or your city for the sole purpose of driving those men out of employment, and seeking to compel them voluntarily to seek employment elsewhere.

MR. CHAS. B. SMITH. Is not that an exaggerated assumption?

MR. LENROOT. No, it is not an exaggerated assumption, for the reason that in the naval bill at the last session—I am violating no confidence in saying that we were told *that power was desired in the naval bill for that express purpose* (referring to par. 2 of the Naval Emergency Fund section of the Act of March 4, 1917. Italics ours.).

³Cong. Record, Vol. 345, p. 2699.

4. The court below advanced nothing in support of its opinion that the clause in question did not apply to private contracts, except to say that it was not to be supposed that the legislature intended to do anything so uncalled-for and unjustifiable as to authorize the modification or cancellation of private contracts (*Russell* case, Rec., pp. 135, 137).

It is evident that the right to require performance of a contract for supplies is as much a chose in action as the supplies themselves are choses. It is also evident that the abrogation, or annulment, or cancellation, or suspension of such a contract between private parties by the government in order to make way for military or naval supplies in time of war, is, in effect, a taking or requisitioning of the contract for military or naval purposes. If it would be a proper exercise of legislative power to provide for the requisitioning of the choses—the supplies themselves—it is not perceived why it would not be equally proper for the legislature to provide for requisitioning the chose in action—the right of the one private party to require performance of the contract by the other.

It is to be observed that the British “Defence of the Realm” Acts and Regulations, on which the Naval Emergency Fund section was modeled, expressly provide, in various places, for the “annulment”, “abrogation”, “modification” and “suspension” of private contracts standing in the way of the expeditious procurement of military and naval supplies.*

The Emergency Shipping Fund Section.

This section of the Military and Naval Deficiency Appropriation Act of June 15, 1917, was likewise not a

*Ante, note, pp. 11, 12.

part of the bill as introduced in the House. (H. R. 3971, 65th Cong., 1st Sess.), but came in by way of amendment in the Senate.

The explanations of this measure in the two Houses by members of the committees that had it in charge, show that the whole object of the provision for the cancellation of contracts was to clear the shipbuilding and industrial plants of private contracts so as to expedite the production of military and naval supplies for the government.

The court below, in the *Meyer* case, refused to consider these explanations and discussions as throwing light on the question of the application of the provision to the cancellation of government contracts—this on the familiar ground that expressions of opinion by members of Congress, in the course of legislative debate, as to the meaning and scope of particular language in a bill, are not to be considered by the courts in arriving at the true construction of that language.

We do not ask the court to consider the views of members of Congress expressed in debate upon the question of the application of this cancellation provision to government contracts. *No question of that kind was raised in either House*, and consequently no views upon such question were expressed by members in discussing and explaining the amendment. What we do ask the court to consider is, the course of the two bills through the two Houses from the time of their introduction to the time of their passage, and the explanations of the amendments in question that were made on the floor by members of the committees that had the amendments in charge. We believe that the court will rise from its survey of the legislative situation with the clear conviction that it never entered the mind of any man in either House that there would be,

in the future, a claim that the amendments were intended to provide for the cancellation of government contracts.

If there was such an intent, how are we to account for the fact that in all the explanations of the amendment in either House there is not a line to indicate that intent on the part of those who made the explanations, nor of those to whom the explanations were addressed?

If there was such an intent, is it conceivable that there would be not a man on the floor of either House to make it known, nor to make an inquiry about it?

It has been several times held by this court that in case of doubt as to the true construction of a statutory provision, resort may be had to the report of the committee that had the measure in charge:

Holy Trinity Church v. United States, 143 U. S. 457;

The Delaware, 161 U. S. 459;

Butterfield v. Stranahan, 192 U. S. 470;

Lapina v. Williams, 232 U. S. 78;

Binns v. United States, 194 U. S. 486;

Duplex Printing Co. v. Deering, 254 U. S. 443;

In the first of these cases this court said:

“In construing a doubtful statute, the court will consider the evil which it was designed to remedy, and for this purpose will look into contemporaneous events, including the situation as it existed, and as it was pressed upon the attention of the legislative body while the act was under consideration.”

In that case the naked letter of the alien contract labor law would have prohibited the importation of skilled laborers into this country. This court resorted to the report of the committee in charge of the measure to show that the act was directed against the importation of common labor only. In that respect the case is very like this, in which the naked letter of the act, separated from the context, was held by the court below to apply to government contracts.

The formal reports of the committees having charge of these bills and amendments contain only figures and throw no light on the question of the application of the cancellation clause to government contracts, but the explanations made on the floor of each House by the chairmen of those committees are very helpful in that direction. In the last two of the above cases the explanations of the measure on the floor of the House by the chairman of the committee in charge, were treated as the equivalent of a further report by the committee itself, within the meaning of the rule. It will be seen from similar explanations by the chairmen of the two committees, in the instant case, that what was pressed upon the attention of the committees and of the two Houses, was, not the desirability of a provision for the cancellation of government contracts, but the necessity of a provision for the cancellation of private contracts (notably, those of the Cunard Steamship Company aggregating \$100,000,000) as a part of the program for assuming control of the great steel and shipbuilding plants.⁵

⁵See the Committee Hearings sent by the chairman of the Senate Committee on Appropriations to the desks of senators while the amendment was being debated (Cong. Record, Vol. 351, p. 2511). See also the statement of Mr. Fitzgerald, chairman of the House Committee on Appropriations, in bringing up the amendment in the House, that his committee, when

It will be seen from the remarks of Mr. Underwood in the Senate (Vol. 351, p. 2514), that the whole of the "Emergency Shipping Fund" amendment was "new legislation" in a general appropriation bill, and therefore liable to be stricken out on a point of order. From his remarks, and those of other senators who joined in the discussion, it appears that the amendment was retained only because of the gravity of the situation and of the pressing necessity of expediting the building of ships as much as possible, and because of the insistence of the President and of Gen. Goethals, who was in charge of the shipbuilding program. If, as now claimed by the defence, the cancellation provision was intended to apply to government contracts, it would have made the amendment still more objectionable from the "new legislation" point of view, since the cancellation of government contracts would not have been germane to any of the provisions of the bill nor of the amendment, and it would have been a most singular thing that the senator, who supported the objection in committee, did not tell the committee that the provision was intended to apply to the cancellation of government contracts. The true explanation of his silence in that regard is that such a construction of the provision did not occur to him, nor to anyone then present.

In order that the Senate might be fully advised of the necessity and purposes of the Emergency Shipping

" . . . confronted with the question of considering the Senate amendment, determined that the only authority it could include in the bill was that authority necessary to enable the ships to be secured rapidly with the commandeering powers." (Vol. 351, p. 3019.)

If Chairman Fitzgerald intended that the cancellation clause and the "just compensation" clause should be construed as the court below has construed them, that is, to enable the government to escape the full measure of its liability under its contracts by cancelling them *after the close of the war*, he misled the House in making the above statement.

Fund provisions, Mr. Martin, chairman of the committee in charge of the measure, caused copies of the Committee Hearings, containing the statement of Mr. Denman, Chairman of the Shipping Board, and of Gen. Goethals, in charge of the shipbuilding program, to be distributed in the Senate chamber during the discussion of the measure.⁶ In view of the announcement of this court, in the Holy Trinity Church case, *supra*, that, in the construction of a statute, the court will look into the situation "as it was pressed upon the attention of the legislative body while the act was under consideration", we presume that the court will examine these Hearings, with the view of ascertaining what particular exigencies were to be met, and what obstructions removed by that measure, and whether any demand was made upon the committee for a pro-

"Cong. Record, Vol. 351, p. 2511. These Hearings, at one time "confidential print", but now no longer so, are Nos. 9 and 17, 65th Cong. H. R. 3971, and copies will be found in the files of the Senate Committee on Appropriations. We append below an extract from No. 17, which is directly in the teeth of the ruling of the court below, in the Russell case, that the cancellation clause ~~of the contract~~ has no application to private contracts. It is evident, from the remarks of Gen. Goethals, that he considered the commandeering of a speculator's shipbuilding contract, the equivalent of a cancellation or abrogation of that contract.

THE CHAIRMAN. In addition to that \$500,000,000—if you commandeer these yards, you do not want to commandeer anything except shipyards?

MR. DENMAN. And ship contracts.

GEN. GOETHALS. And ship contracts.

THE CHAIRMAN. Do you want to commandeer the ship contracts and take over these English ships.

GEN. GOETHALS. England is only one of those having contracts. There are a number of speculators building ships in these yards for speculative purposes. Those are the people I would like to get after. They are filling up the ways—working eight hours a day, and tying up our constructive program. If we go into this thing at all, I want to get rid of those people.

vision that would authorize the cancellation of government contracts in case of a sudden termination of the war.

We here and now challenge the production of a single line in any document or print of any kind emanating from the government prior to the enactment of these amendments that would have a tendency to show that members, in voting thereon, understood that the provision for the cancellation of contracts applied to government as well as private contracts.

We likewise challenge the production of a single line of printed matter emanating from government sources prior to the close of the war in 1918, that would have a tendency to show that the idea of the application of the cancellation provision to government contracts was not an afterthought on the part of the War and Navy Departments—a mere becoming alive to the possibility of such a construction being placed upon the provision.

It is to be observed that the provision is for the cancellation of *existing* as well as future contracts, in which respect the construction given the section by the Court of Claims puts the two Houses in the attitude of authorizing the partial repudiation of government contracts. When the contract was made the contractor was, in case of cancellation, entitled under the decisions of this court to an allowance for loss of his profits. But the Court of Claims says that the "just compensation" directed by the act to be made him, covers only his actual expenses, with no allowance for loss of profits. The act, then, amounted to a confiscation of the contractor's rights, and a repudiation of the obligations of the government in that regard. If such was the intent and legal effect of the cancellation provision, it must have been known to those who had the

measure in charge. Does not the Court of Claims convict them of a want of candor in failing to notify members that the intent of the committee was to authorize the repudiation of government contracts to a certain extent, and that the measure under discussion would have that effect?

The reason why such an intent did not occur to anyone in either House undoubtedly was, that the cancellation provision, considered with reference to the ends to be obtained, showed on its face that it was intended to apply only to private contracts. The President was authorized, not "to cancel any contract", etc., but "within the limits of the amounts herein authorized, to cancel any contract", etc. The words "within the limits of the amounts herein authorized", could apply only to the cancellation of private contracts, because the cancellation of government contracts would add nothing to the liability of the government, so far as exceeding the limits of the emergency fund was concerned, the government being already liable for the contract price. The cancellation of the contract could not carry the liability of the government beyond the contract price, because the damages could not exceed the difference between the cost of production and the contract price. In fact, under the construction of the "just compensation" clause by the court below, the cancellation of government contracts would reduce instead of increase the liabilities of the government, and therefore make it unnecessary to impose a restraint upon the President in that particular. On the other hand, it was obvious that the cancellation of private contracts, bringing about enormous losses in the ship-building and other principal industries, might easily involve the government in liabilities in excess of the \$250,000,000 authorized by the act.

The Court of Claims has wrenched the cancellation provision from its setting in the act, and construed it as if the qualifying and explanatory words "within the limits of the amounts herein authorized" were not there. They said nothing about those words in their opinion in the *Meyer* case and in the *Russell* case, and in so doing they violated the rule that every word in a statutory provision must be considered when the meaning of the provision is in dispute.

Another reason why nothing was said, and no inquiry made, on the floor of either House as to the application of the cancellation provision to government contracts, was that no legislation was required to authorize the cancellation of government contracts, nor to provide a remedy for the contractor injured by the cancellation. The government has at all times had the right to cancel its contracts, with liability over to the contractor in damages, and the contractor has always had his remedy in the Court of Claims, which right has been often exercised, with consequent suit by the contractor, as the reports of the decisions of this court will show. If the court below was right in its construction of the act, the only alternative is the supposition that the act was intended to provide a way by which, in case of a sudden and unexpected close of the war, the government could be relieved of a part of its contract liabilities at the expense of its contractors. We believe that this court will be slow to impute any such intention to the two Houses.

It is plain that the cancellation of contracts was to be a part of the process of "requisitioning or otherwise acquiring plants, material", etc., and therefore did not apply to government contracts. This appears from the following arrangement of the salient provisions of the amendment:

“Within the amount herein authorized” “\$250,000,000” for “the cost of purchasing, requisitioning, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction” “the President is hereby authorized and empowered” “to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.”

“Within the amount herein authorized”. Authorized for what? For “the cost of purchasing, requisitioning, or otherwise acquiring plants, material”, etc. What figure would the cancellation of government contracts cut in that cost? None, because the cancellation, under the construction adopted by the court below, would reduce instead of increase the outgo of the government.

Is there any good reason why those provisions should not be rearranged and read as above, and, so read, is it not clear that the cancellation of contracts was to be a part of the process of acquiring plants, material, etc., for which the incurrence of liabilities to the amount of \$250,000,000 was authorized? If so read, the provision could have no application to government contracts, because the government could not commandeer its own contract, *and because by cancelling its own contracts the government would be getting rid of existing liabilities and not incurring new ones.* The act nowhere shows an intention to empower the President to cancel or modify a contract for the purpose of relieving the government from its liabilities thereunder. The object of the act was to enable the President to incur new liabilities in a manner not provided for by law, and this could only be, so far as

the cancellation of contracts was concerned, by the cancellation of private contracts.

Apart from the mere letter of the provision, wrested from its context and shorn of the explanatory and qualifying phrase "within the limits of the amounts herein authorized", the court below has been able to point to nothing in the act itself, nor elsewhere, to show that the cancellation of government contracts was intended by the provision in question, except they say:

1. The provision of the act,

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between the Government and the German Empire.

shows that the power to cancel contracts was intended to apply to government contracts as well as private contracts, because there would be no occasion to cancel or modify private contracts after the war. There would be much force in this argument if the powers of the President, under the amendment, were limited to the cancellation or commandeering of contracts. But inasmuch as they include holding and operating the commandeered ships, shipyards, plants, charters, etc., and as it was necessary that the government should retain control of the commandeered property some short while after the close of the war in order to wind up its operation and control of the property with as little loss and inconvenience to itself as possible, the argument drawn from the want of occasion to cancel private contracts after the close of the war, loses its force.

2. They say that the cancellation of private contracts was not intended, because it is not to be sup-

posed that the legislature intended to authorize anything so uncalled-for and unjustifiable as that. Our reasons for believing that argument unsound are given, *ante*, p. 17.

II.

Four-inch brass cartridge cases are not "material", and form no part of the "equipment" of a ship, within the Emergency Shipping Fund section of the Act of June 15, 1917.

The instant case differs materially from the *Russell* case, No. 485, and *Freygang v. United States*, No. 480, in connection with which it is submitted to this court. In neither of these cases is any question made that the *subject matter* of the contract was not within the terms of the Act of June 15, 1917. In the instant case it is earnestly contended that the rights of the parties are not governed by the provisions of that act, and that, therefore, the rule of damages should be the familiar one established by this court in

United States v. Purcell Env. Co., 249 U. S. 313-317 and earlier cases.

We submit that the contract now under consideration was for "*war material*" and, therefore, not covered by the terms and definitions of the Act of June 15, 1917.

Cartridge cases are munitions. The Act of June 15th does not apply to contracts for munitions. In each of the Acts, March 4 and June 15, 1917, an attempt is made to define the terms used. In the Act of March 4, 1917, this definition is as follows:

"The words '*war material*' shall include arms, armament, *munitions*, stores," etc.

In the Act of June 15th, the definition is:

"The word '*material*' shall include stores, supplies and equipment for ships, and everything required for or in connection with the production thereof."

A sharp distinction is made between the word "material" and the words "*war material*."

It will be noted that the word "munitions" is excluded from this definition. As was stated by the court below in the *Meyer* case, changes and additions, as between the two acts, become significant. It is certainly significant that the language of the Act of March 4, 1917, under which the present contract cannot possibly be, differs in this material respect from the Act of June 15, 1917, which the defendant claims is controlling. It is respectfully submitted that cartridge cases can by no stretch of language be included in the terms "ships or material therefor".

In the *Meyer* case, the court below states that the word "material", as defined in the Emergency Shipping act, includes equipment for ships, and that scales are such equipment. Certainly, it cannot be claimed that cartridge cases and scales stand in the same class as material. Scales are equipment. Cartridge cases are "munitions".

Certain cases were cited in defendant's brief below in support of its contention that cartridge cases are covered by the Act of June 15, 1917, as part of the

"equipment" or "stores and supplies" of auxiliary cruisers or armed merchantmen. Those cases are not in point, because the question here is not whether, under some circumstances, cartridge cases might not be considered part of the equipment of an armed merchantman, but whether Congress having specifically provided, in the Act of March 4, 1917, for the cancellation of the contracts for "*war material*", and having placed cartridge cases, as "*munitions*", in that category, did not thereby exclude a contract for cartridge cases from the operation and effect of the Act of June 15, 1917, which provides for the cancellation of contracts for "*materials*" for ships, and for the inclusion of "equipment" and "stores and supplies" in the word "material" thus used. Upon that question the cases cited in the brief below have no bearing whatever.

Perhaps it may not be altogether clear why Congress should make the provision for the cancellation of contracts for the building of merchantmen applicable to both existing and future contracts, and limit to "existing contracts" the provision for the cancellation of contracts for the guns, shells and other war material with which the merchantmen were to be armed, nor altogether clear why a distinction should have been made between "*materials*" and "*war materials*" in the application of the two acts. Be that as it may, we respectfully submit, the courts are not concerned with the wisdom, the reasonableness, or the expediency of the limitation and distinction, and that it is their sole duty to give effect to the will of the legislature as it is here expressed.

III.

The instant contract was not made by the President, or his representatives, under the provisions of the Act of June 15, 1917, because it was made prior to the Executive Order of August 21, 1917, transferring the powers of the President under that Act to the Secretary of the Navy.

The instant case also differs in another important respect from the *Russell* case, No. 485, and *Freygang v. United States*, No. 480. In neither of these cases is any question made that the circumstances surrounding the making of the contracts brought them within the terms or limitations of the Act of June 15, 1917. The date of the contract in the *Russell* case was May 14, 1918, made in behalf of the government by the Acting Secretary of the Navy. The date of the *Freygang* contract was July 16, 1918, the United States contracting through the United States Shipping Board Emergency Fleet Corporation. In the *Anderson* case now submitted the contract was made under date of July 23, 1917, the United States acting through the Paymaster General of the Navy in ordinary course.

If the contract was not made under the provisions of the Act of June 15, 1917, then the provisions therein contained relative to "just compensation" in the event of cancellation, would not apply and the rule of damages would be, as above submitted, that formulated by this court in

United States v. Purcell Env. Co., 249 U. S. 313-317.

The court below held, in the *Meyer* case, that the contractor could not complain of the cancellation of his contract, because he knew, at the time of its execution,

that it was liable to be cancelled at any time under the Act of June 15, 1917. This, if correct, we submit, could apply only to those cases in which the contract was entered into, without advertisement, by the Secretary of the Navy in pursuance of authority given him by the Executive Order of August 21, 1917. In this connection claimant respectfully points out:

That the contract in the present case was made on the 23rd day of July, 1917; that on the 21st day of August, 1917, the President issued Executive Order No. 2687; that in said order powers were delegated to the Secretary of the Navy, which might be exercised directly by him, or through any officer or officers who, acting under his direction, have authority to make contracts on behalf of the government; that therefore, between the dates of June 15, 1917, and August 21, 1917, the date of the executive order, no power had been delegated to the Secretary of the Navy, nor through him, to any officer acting under his directions; that in this interval, that is, on the 23rd day of July, 1917, the contract in question was made; that, therefore, it was made in the ordinary and usual course of navy contracts, and not under the authority of the Act of June 15, 1917, nor of any executive order based thereon, and, hence, that claimant cannot be held to have had notice, at the time of the execution of the contract, July 23, 1917, that it was liable to be cancelled under the Act of June 15, 1917.

The claimant was invited to bid, and did bid, and as the lowest bidder, received the contract. (Finding IV, Rec., p. 9.)

There is no evidence in the case of any correspondence or conference between the claimant and the representatives of the defendant prior to or at the time of

the making of the contract. Neither is there any reference in any of the correspondence, nor was there any conversation or any conference between the claimant and representatives of the government prior to or incident to the cancellation, in which any claim or statement is made that the cancellation was made or attempted to be made under any of the Emergency Acts or otherwise than in usual course.

The court below, in the *Meyer* case, pointed out the necessity of mutual agreement in arriving at a valid contract. The Circuit Court of Appeals for the Second Circuit in

Roxford Knitting Co. v. Moore & Tierney, Inc.,
265 Fed. 177,

emphasizes this necessity.

In this case, priority of a government contract over a civil contract under the Emergency Acts was claimed. The contract was in the ordinary contract form and not on an order form, under the commandeering statutes. The court after an exhaustive examination, in which the evidence of the representatives of the government and of the plaintiff was considered, reaches the conclusion that in order to bring the contract under the Emergency Acts, it must be understood by both parties and shown by the negotiations that if the contract were not accepted, the goods or the seller's plant would be commandeered by the government.

The court says, page 191:

"When a manufacturer is given to understand that he is required to supply certain goods to the Government of the United States, and is told that he has no option to decline to comply, we are satis-

fied that as to these goods an order has been placed and received within the spirit and intent and letter of the Statute."

Application for a writ of certiorari was made to this court and was denied.

Roxford Knitting Co. v. Moore & Tierney, Inc.,
253 U. S. 498.

This denial impliedly stamps with the approval of this court the reasoning of the Circuit Court of Appeals.

Applying this test to the instant case. There is not a scintilla of evidence that the claimant was ever informed either prior to or at the time of the making of the contract, or prior to or at the time of the cancellation, that the contract was claimed to be made or claimed to be cancelled under the powers granted in any of the Emergency Statutes, nor was any tender made as required by those acts.

Was the claimant at any time given to understand that he had no option but to take the contract?

Most certainly not.

Was it understood by both parties and shown by the negotiations that if the contract were not accepted the plant would be commandeered?

Most certainly not.

And, yet this is the test which should be applied in determining whether the contract is or is not under the Emergency Acts.

Assuming that the claimant had been familiar on July 23, 1917 (the date of its contract), with the existing Emergency Acts, those of March 4, 1917 and June 15, 1917, and had noticed that one of them gave power to the President to contract for "war material" and

that the other did not, that "*munitions*" were defined as war material in the Act of March 4, 1917 (which act could not apply to this contract), that in the Act of June 15, 1917 there was no mention of war material, that its contract was for *munitions*, that it was in no way informed by the government officials when requested to bid that the contract was made under the Emergency Acts, can it conceivably be held that the officials of the Anderson Company knew or had any reason to think that they were acting under a compulsory order?

IV.

The provision for "just compensation" to the contractor, in case of cancellation of his contract, did not exclude an allowance to him for the profits he would have realized if the contract had not been cancelled.

It is obvious that the question of the application of the cancellation provision, in the Act of June 15, 1917, to government contracts, would be a matter of indifference to the contractor if, in case of such cancellation, he would have the benefit of the decisions of this court entitling him to an allowance for the profits he would have realized if there had been no breach of the contract by the government.

United States v. Speed, 8 Wall. 77, 85;

United States v. Behan, 110 U. S. 338;

United States v. Purcell Env. Co., 249 U. S. 313.

Under these decisions, he would be entitled to recover, as damages for the breach, the difference between the contract price and the cost of production or performance.

The court below says that he cannot have the benefit of these decisions because, it says, the "just compensation" to which he is entitled under the act, includes only an allowance for special expenses incurred by him, and excludes any allowance for loss of profits.

In saying this the court necessarily imputes to the legislature an intent to provide a way by which the government would avoid a part of its liability for breach of its contract.

Did the Congress so intend?

Did the Congress anticipate such a construction of the words "just compensation" by the courts as would put it in the position of impairing the obligation of government contracts, and confiscating the property rights of the contractor?

If so, there is not a line nor a word in any printed matter issued by the government prior to the close of the war in 1918, that indicates such intent, or such anticipation of the construction that has been placed upon the words "just compensation" by the court below.

So far as government contractors were concerned, there was no occasion to provide for their "just compensation" or give them a remedy in the Court of Claims, because the decisions of this court determine what would be just compensation to them, and their remedy in the Court of Claims was already provided for.

Doubtless the reason why provision was made for these matters was that there has always been more or less of a question as to when an appropriation of private property by government agency amounts to a tort on the part of the agent, for which the government is not responsible, or furnishes ground for the implication of a contract to pay, in which case the

government is responsible. The jurisdiction of the Court of Claims depends, in this class of cases, upon the existence of the implied contract to pay, that court having no jurisdiction of a tort on the part of the government agent.

Langford v. United States, 101 U. S. 341;
Harley v. United States, 198 U. S. 229.

The object, then, of the provision for "just compensation" and for suit in the Court of Claims was to remove the possibility of the property owner being confronted with a question as to the liability of the government for the seizure of his property, or as to the jurisdiction of the Court of Claims in the premises.

The words "just compensation" were pitched upon in framing the measure because they were the most apt, suitable, and comprehensive for the purpose indicated. They were not put there for the purpose of enabling the government to escape a part of its liability for the breach of its contracts.

If the cancellation clause had been really intended to apply to government contracts, what would have been its purpose? Obviously, to relieve the government from its obligation to accept vast quantities of supplies that would not be needed in case of an early or unexpected close of the war. Yet the Court of Claims does not, in any of its opinions, even hint that such was the purpose of the provision. Why? Because, under the construction placed by them on the "just compensation" clause, the government would be put in the position of repudiating, in part, the obligations of its "existing" contracts for supplies, if it should cancel those contracts at the close of the war. The failure of the court below to refer to this phase of

the case, which cannot possibly have escaped its attention, is a confession of the weakness of its position.

In addition to the foregoing, we urge the following reasons in support of our contention that the court below erred in holding that "just compensation" does not include an allowance to the contractor for loss of his profits.

(a) It cannot be denied that in many cases there would be no other loss from the cancellation except loss of profits, and that the provision for just compensation to the contractor could not be enforced without an allowance to him for loss of profits.

For example: suppose a profitable contract in which the government furnished the plant and the materials and the contractor the labor only, and for the performance of which no special outlay by the contractor was required. Suppose the cancellation of this contract by the government when four-fifths completed—all earned compensation having been paid up to that time. How, in such a case, would it be possible to compensate the contractor except by an allowance for his loss of profits in respect to the uncompleted portion of the contract? Is he to be told that his paid compensation for the completed portion includes compensation for the cancelled portion also?

(b) The decision in question would make it necessary, in allowing just compensation, to distinguish between private contractors and government contractors, when there is nothing in the act to justify the distinction.

For example: suppose the requisitioning or commandeering of a plant engaged in the performance of a profitable private contract, and the operation of the

plant by the government for its own purposes. How would it be possible to give just compensation to the owner and contractor in such a case without an allowance to him for the loss of his profits on the work that was in progress? How could a reasonable allowance for the seizure of his property be made without taking into consideration the loss resulting from the destruction of his business? Or, suppose the commandeering of a contract between private parties for the manufacture of an article on which the contractor was making a profit of fifty per cent. Would not the United States, seizing the whole of the contractor's output of that article, be required in common honesty to pay him a price for the article that would yield him a profit of fifty per cent? If the act applies to government contracts, as contended by the defence, as well as to private contracts, it makes no distinction between them as to the just compensation to be awarded the contractor. Has the court the right to make such distinction and say that, in the case of the private contractor there may, and in that of the government contractor there may not, be an allowance for loss of profits?

(c) There is no authority to allow compensation except in those cases in which the contract was a profitable one; and hence the allowance must necessarily include prospective profits.

If the contractor was so lacking in judgment as to make a contract at a figure that would leave him nothing over and above his expenses, including those for special facilities, the cancellation of that contract would be a benefit to him, and hence afford no ground of recovery against the government.

We do not overlook, in this connection, the decision of this court in

United States v. Behan, 110 U. S. 338,

that where the government *wrongfully* discontinues work under a contract it is estopped to deny that the contractor would have made a profit, so far as his right to recover to the extent of his reasonable and necessary outlays is concerned. In that case, after the contractor had expended about \$33,000 for labor and materials on a river improvement contract, the War Department abandoned the scheme as impracticable, and sent the contractor about his business without paying him a dollar for what he had done, and afterwards, when he sued to recover his expenses, raised the point that he would have lost money if he had been allowed to complete the work. No such situation is presented here. Both in this case and in that of the Meyer Scale Company every dollar of the contractor's expense for overhead, materials and special facilities was returned to it in the payments on the completed part of the work.⁷ And, according to the government's own contention, it did not *wrongfully* stop the work, because, it says, the statute allowed it to cancel the contract, and that claimant knew,

⁷See Finding XIII, Rec. p. 13. It is shown, also, by this finding that if the full amount claimed by plaintiff were allowed it, its profit on the whole contract would have been a small fraction over 20 per cent. Therefore the allowance of only \$43,727.71 of the amount claimed (\$96,102.97), was really, though not nominally, a reduction of its profit on the whole contract from 20 per cent to 15½ per cent. Hence it seems that the plan, evolved in the War and Navy Departments, of allowing the contractor for his special expenses, and raising an amortization account for that purpose, was nothing more than a plan for cutting down his profits to a figure that they would be willing to allow.

when it undertook the work requiring special facilities, that the contract was liable to be cancelled at any time. The decision is therefore not inconsistent with our contention that if it can be shown, in cases arising under the Act of June 15, 1917, that the contract price was too low to admit of any profit to the contractor, he would not be entitled to anything under the act.

But entirely apart from the foregoing, the claimant contends that the contract is not governed or controlled by the provisions of the Act of June 15, 1917, as has been heretofore argued in this brief, and that therefore the *Behan* case, last above cited, is a direct authority in support of its contention that it is entitled to recover the profits which it would have made on the cancelled portion of its contract.

The severe criticism of the contract in the *Meyer* case by the court below would indicate that its opinion was, to some extent, influenced by the excessive profits that the contractor would have realized if its claims had been allowed. We do not suppose that the judgment of this court will be affected by considerations of that kind. But if we are mistaken in that, we have only to say that our contract is beyond criticism in that respect; and that we are not advised of any case in which the ignorance, inexperience, or carelessness of the contractor in fixing the contract price, has been held an adequate defence to the claims of the United States growing out of non-performance of the contract by him.

The court below rendered judgment in favor of plaintiff for the exact amount (\$43,727.71) of that portion of plaintiff's expenditure for special facilities

that it found to be chargeable to the unperformed part of the contract. (Finding XII, Rec., p. 13.) Consequently, it made no finding as to what amount, if any, should be deducted from the recovery on account of relief from risk, if any, involved in full performance of the contract.

Possibly, the court regarded such risk, if any, as negligible, in view of its findings that all the materials for the contract product were furnished by the government, and that, if not interfered with by "priority orders" of the government, plaintiff could have completed the contract within sixty days from the time it stopped work on the cases. (Findings IV and X, Rec., pp. 9, 12.)

It is respectfully submitted that the judgment of the court below should be reversed, and judgment rendered by this court in favor of plaintiff for the sum of \$96,102.97, pursuant to Finding XI, Rec., p. 13.

ARTHUR H. RUSSELL,
Of Counsel.

CHAPMAN W. MAUPIN,
Attorney for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALBERT & J. M. ANDERSON MANUFACTUR-
ing Company, Appellants,

v.

THE UNITED STATES, RESPONDENT.

No. 740.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

Respondent accepts the statement of the case set forth in appellant's brief herein, pages 1 to 3, inclusive, with the following addition: The case of *Russell Motor Car Company v. United States* is set forth in the transcript of the record in the Supreme Court of the United States, October term, 1922, No. 485.

The instant case was decided upon the theory of the Court of Claims in the *Russell Motor Car case*, which case is set forth in the transcript of record in the Supreme Court of the United States, October term, 1922, No. 485. The instant case is to be heard in connection therewith.

ARGUMENT.

The claimant in its brief herein has set forth four specifications of error, all of which said specifications are answerable by the theory set forth in the brief for respondent in the case of *Russell Motor Car Company v. The United States* (*supra*) based upon the rule of

law, that contracts with the United States are so made with reference to the established law of the land, and should be so understood and construed unless otherwise clearly indicated by the terms of the agreement.

Wilson v. Rousseau, 4 How. 646, 685.

The West River Bridge Co. v. Dix, 6 How. 507, 532.

United States v. Boisdore, 11 How. 63, 88.

Rees v. Watertown, 19 Wall. 107, 121.

Ogden v. Saunders, 12 Wheat. 213, 297.

Counsel for the United States believe that the opinion in the case of the *Russell Motor Car Company, appellant, v. United States, respondent*, October term, 1922, No. 485 (Record pp. 131-144), of the Court of Claims, delivered by Downey, Judge, and concurred in by Hay, Judge; Graham, Judge; Booth, Judge; and Campbell, Chief Justice, is sound and adopts the reasoning contained therein as its argument against each and every specification of error set forth by claimant in its brief.

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,

Solicitor General.

ROBERT H. LOVETT,

Assistant Attorney General.

ALFRED A. WHEAT,

Special Assistant to the Attorney General.

ALEXANDER H. McCORMICK,

Special Assistant to the Attorney General.

...the desire of the Government to ... *affirmed.*

RUSSELL MOTOR CAR COMPANY *v.* UNITED STATES.

FREYGANG ET AL., PARTNERS DOING BUSINESS UNDER THE NAME OF MIDLAND BRIDGE COMPANY *v.* UNITED STATES.

ALBERT & J. M. ANDERSON MANUFACTURING COMPANY *v.* UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 485, 480, 740. Argued March 6, 1923.—Decided April 9, 1923.

1. The Act of June 15, 1917, c. 29, 40 Stat. 182, empowered the President, within the limits of amounts appropriated, "to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material," and to exercise the authority "through such agency or agencies as he shall determine from time to time," "material" being defined as including stores, supplies and equipment for ships and everything required for or in connection with the production thereof.

- Held:* (a) The word "material" included anti-aircraft gun-mounts for the Navy. P. 518.
- (b) The power "to modify, suspend, cancel, or requisition," any contract, etc., extends to the cancelation of the Government's own contracts. P. 519.
- (c) An executive order delegating power under this clause in sweeping terms to the Secretary of the Navy, should be construed broadly, and included the power to cancel government contracts. P. 523.
- (d) An order of the Secretary canceling a contract need not refer to the statute. *Id.*
- (e) The just compensation to which a party is entitled, upon cancelation of his contract under the statute, does not include anticipated profits. *Id.*
2. The maxim *noscitur a sociis* is used only to solve ambiguity. Verbs in an enumeration whose meaning, when they are separately applied to their common object, is plain, should be interpreted distributively. P. 519.
3. Where the meaning of a statute may be ascertained without extrinsic aid, debates in Congress will not be considered. P. 522.
- 57 Ct. Clms. 464, 244 and 626, affirmed.

APPEALS from three judgments of the Court of Claims fixing just compensation for the cancelation of claimants' contracts with the Government. In the first and third cases the contracts for the manufacture of anti-aircraft gun carriages, and brass shell cases, were entered into through the Navy Department and were canceled by the Secretary of the Navy, by authority delegated under the Act of June 15, 1917. In the second case (No. 480) the contract was with the Emergency Fleet Corporation, for the construction of barges, and was canceled through that agency, under like authority.

Mr. Lyman M. Bass for appellant in No. 485.

Mr. George A. King, Mr. William B. King and Mr. George R. Shields, for appellants in No. 480, submitted.

Mr. Chapman W. Maupin and Mr. Arthur H. Russell, for appellant in No. 740, submitted.

Mr. Solicitor General Beck, with whom *Mr. Assistant Attorney General Lovett*, *Mr. Alfred A. Wheat* and *Mr. Alexander H. McCormick*, Special Assistants to the Attorney General, were on the briefs, for the United States.

Mr. Louis Titus, by leave of court, filed a brief as *amicus curiae* in No. 485.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These cases, here on appeal from the Court of Claims, differ in details of fact, but are controlled by the same principles of law and depend alike upon the construction and application of the same statutory provisions.

The salient facts in the case of the Motor Car Company are as follows: That company, on May 14, 1918, entered into a contract, numbered 1498, with the United States, acting through the Secretary of the Navy, to make two hundred and fifty anti-air-craft gun mounts, at an agreed price of \$7,860 each, to be delivered at stipulated periods, the last being the sixty days ending April 30, 1919.

Prior to the making of the foregoing contract, viz: in November, 1917, a similar contract, numbered 949, had been entered into by the same parties, the last period for delivery being the sixty days ending January 15, 1919. The actual work under contract 949 was begun about March, 1918; and some time later, and after the making of contract 1498, at the request of the company, the Secretary consented to allow all shipments of mounts to be applied upon contract 949 until its completion. Deliveries under that contract were finished in June, 1919.

On November 18, 1918, the Navy Department expressed a desire that the manufacture of gun mounts under both contracts be greatly decreased and that the company resume production of peace time products as soon as possible "so that a minimum of economic dis-

turbance will be felt during the transition." In its communication the Navy Department requested that immediate arrangements be made for the reduction and eventual stoppage of production of materials under these contracts and the substitution therefor of commercial products, and that the company "initiate preparations for cancellation along the lines indicated." On November 23, 1918, the company was notified that the Secretary had authorized the cancellation of contract 1498, directed to cease work in connection therewith not later than December 2, 1918, and informed that a just and fair settlement would be made as provided by contract and in accordance with the statute covering such cases. Extended negotiations followed in an effort to bring about a settlement and the Secretary finally fixed the sum of \$444,847.68 as just compensation for the cancellation of the contract. Seventy-five per cent. of this amount was paid and accepted by the company expressly without prejudice to its rights.

The Court of Claims, after hearing the case, found that just compensation for the cancellation of the contract was the sum of \$495,250.34, which amount included a number of elements and items not necessary to be set forth. The court further found that if the company had been permitted to complete the contract according to its terms it could and would have earned a profit, in round figures, of \$960,000, but held that the action of the Secretary of the Navy in cancelling the contract was within the authority conferred by the statute, presently to be mentioned, and that the company consequently was not entitled to an award including anticipated profits.

The statute upon which this determination rested was the Act of June 15, 1917, c. 29, 40 Stat. 182, making deficiency appropriations for the military and naval establishments on account of war expenses, and for other purposes. This act contained a provision, authorizing and

empowering the President, within the limits of the amounts appropriated ". . . (b) to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material." The President was authorized to exercise the authority conferred upon him by the act and expend the money therein and thereafter appropriated "through such agency or agencies as he shall determine from time to time." The authority so far as it concerned the Navy, was by him delegated to the Secretary of the Navy in an order dated August 21, 1917, "in so far as applicable to and in furtherance of the construction of vessels for the use of the Navy and of contracts for the construction of such vessels, and the completion thereof, and all powers and authority applicable to and in furtherance of the production, purchase and requisitioning of materials for construction of vessels for the Navy and for war materials, equipment, and munitions required for the use of the Navy, and the more economical and expeditious delivery thereof." The word "material", the act provided, should include stores, supplies and equipment for ships and everything required for or in connection with the production thereof, and in our opinion included the articles contracted for in this as well as in the other two cases. The act provided that whenever the United States should cancel, modify, suspend, or requisition any contract just compensation should be made therefor to be determined by the President. If the amount so determined should be unsatisfactory the person entitled to receive it could accept seventy-five per cent. thereof and bring suit to recover such further sum as added to the seventy-five per cent. would make just compensation. By the terms of the act the authority granted to the President or delegated by him was to "cease six months after a final treaty of peace is proclaimed between this Government and the German Empire."

The Motor Car Company contends that subdivision (b) of the statute above quoted applies to private contracts alone and affords no authority for the cancellation by the Government of its own contracts. The Court of Claims held otherwise and whether its holding or the company's contention is correct presents the principal question for our consideration.

It must be apparent, we think, that the words of the provision, "any existing or future contract," read with literal exactness, include all contracts, whether private or governmental. But it is pointed out that the power to "requisition" cannot apply to a governmental contract; and this may be conceded, since the Government cannot requisition what it already has. Then it is said that inasmuch as the application of the word "requisition" must be confined to private contracts, the other words associated with it must be likewise restricted by virtue of the maxim *Noscitur a sociis*. That a word may be known by the company it keeps is, however, not an invariable rule, for the word may have a character of its own not to be submerged by its association. Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as this Court has many times held, except in the domain of ambiguity. *Hamilton v. Rathbone*, 175 U. S. 414, 421; *United States v. Barnes*, 222 U. S. 513, 518-519. They may not be used to create but only to remove doubt. *Id.* Moreover, in cases of ambiguity the rule here relied upon is not exclusive. The problem may be submitted to all appropriate and reasonable tests, of which *Noscitur a sociis* is one. Here we have one word which it may be conceded applies only to private contracts, but the other three words standing alone, it likewise must be conceded, naturally apply to governmental contracts as well. Indeed, they more naturally apply to such contracts. The

power to modify the obligations of a private contract is, to say the least, a most unusual one for governmental exercise. To modify a contract is in effect to make a new one, and it puts something of a strain on our conception of the functions of government to concede its power to make contracts between private parties to which neither may assent and which, consequently, neither will be bound to perform.

We do not mean to deny the power of Congress, in time of war, to authorize the President to modify private contracts (leaving the parties free, as between themselves, to accept or not), nor do we suggest that Congress has not done so by the present statute; but the contention here is not that the power in question extends to private contracts but that it is limited to them. This cannot be conceded. The meaning of the four predicate words is not doubtful;—in that respect, as well as in their operative scope, they obviously differ from one another. The question we are called upon to answer is whether, because the words “any . . . contract” must be given a narrower meaning when qualified by the predicate “requisition,” their meaning must be limited in like manner when qualified by one of the other three predicates. *Noscitur a sociis* is a well established and useful rule of construction where words are of obscure or doubtful meaning; and then, but only then, its aid may be sought to remove the obscurity or doubt by reference to the associated words. *Virginia v. Tennessee*, 148 U. S. 503, 519; *Benson v. Chicago, etc., Ry. Co.*, 75 Minn. 163. But here the meaning of the words considered severally is not in doubt, and the rule is invoked not to remove an obscurity but to import one. There is nothing in the rule or in the statute which requires us to assimilate the words “modify” and “cancel” to the scope of the word “requisition,” simply because the latter has a necessarily narrower application. The

meaning of the several words, standing apart, being perfectly plain, what should be done is to apply them distributively, *diverso intuitu*, giving to each its natural value and appropriate scope when read in connection with the object (any contract) which they are severally meant to control. Thus, the predicate "requisition" will be limited to private contracts, while the other words may be appropriately extended to include governmental contracts as well. An illustration is afforded by the Commerce Clause of the Constitution. The power to regulate interstate and foreign commerce is found in the same clause and conferred by the same words, but the scope of the power when applied to the former may be narrower than when applied to the latter. *Groves v. Slaughter*, 15 Pet. 449, 505.

This disposition of the question also accords with the broad purposes of the legislation. When the act was passed we were in the midst of a great war, which called for the utilization of all our resources. The necessities were great, beyond the power of statement. The Government was confronted with the vital necessity not only of producing ships and supplies in unprecedented quantities but of producing them with the utmost haste. Hence it was necessary that everything which stood in the way of or hindered such production should be put aside. But this was a necessity which Congress, of course, realized must sooner or later come to an end, suddenly and completely. With the termination of the war the continued production of war supplies would become not only unnecessary but wasteful. Not to provide, therefore, for the cessation of this production when the need for it had passed would have been a distinct neglect of the public interest. The situation, it is plain, required that production should proceed while the war lasted to the utmost limit of the Nation's power, but that it should come to an end as soon as possible upon the passing of the emer-

gency. In the light of these circumstances, it is not unreasonable to regard the statute now under consideration as intended to accomplish both results, that is: (1) to enable the President, during the emergency, to utilize his powers over contracts to stimulate production to the utmost, and then, (2) upon the passing of the emergency, to enable him to utilize these same powers to stop that production as quickly as possible. To the latter accomplishment authority to modify and cancel government war contracts would contribute most effectively. These considerations lend support to the judgment of the court below construing the statute as having this effect.

In this connection it is not without significance that the authority granted to the President was to cease six months after a final treaty of peace. Obviously, the powers granted to him—among them to modify and cancel contracts—were to continue during the six months' period not for the purpose of forwarding war production but, on the contrary, for the purpose of stopping it. To that end, we conclude, he was authorized to cancel the Government's own contracts such as the one here involved, upon making just compensation to the parties concerned.

We are referred to the utterances of certain members of Congress in debate, which it is argued show that the provision under consideration was meant to cover private contracts. Whether they come within the rule forbidding resort to legislative debates, *Lapina v. Williams*, 232 U. S. 78, 90; *Omaha & Council Bluffs Street Ry. Co. v. Interstate Commerce Commission*, 230 U. S. 324, 333; *Standard Oil Co. v. United States*, 221 U. S. 1, 50; *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 318, or within the exception, *Wisconsin Railroad Commission v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 588, we need not consider, since, for reasons already stated, extrinsic aid for ascertaining the meaning of the language here under review is not required. Besides, though they

may tend to show that the statute was meant to apply to private contracts, these utterances do not justify the conclusion that the statute was not meant to apply to governmental contracts also.

Certain other contentions of the Car Company may be briefly disposed of. In the first place, it is said that the President did not delegate his power respecting contracts to the Secretary of the Navy, and it is suggested that that officer did not in fact pretend to cancel this contract under the statute. The order of the President delegating his authority to the Secretary is in sweeping terms and it is impossible to conclude otherwise than that it was intended to cover the whole field of power in so far as it pertained to the Navy. Executive power, in the main, must of necessity be exercised by the President through the various departments. These departments constitute his peculiar and intimate agencies and in devolving authority upon them meticulous precision of language is neither expected nor required. In cancelling the contract it was not necessary that the statute should be expressly referred to. It was public law of which everyone was bound to take notice.

It is contended, further, that even if the action of the Secretary of the Navy was warranted by the statute the Car Company was nevertheless entitled to have included as just compensation its anticipated profits.

This contention confuses the measure of damages for breach of contract with the rule of just compensation for the lawful taking of property by the power of eminent domain. In fixing just compensation the court must consider the value of the contract at the time of its cancellation, not what it would have produced by way of profits for the Car Company if it had been fully performed. It is evident that no prudent person, desiring to acquire this contract, would have paid for it the full amount which could be realized upon completion, leaving no chance of

return to himself upon the investment or for the risk and labor incident to its performance. The contract, we must assume, was entered into with the prospect of its cancellation in view, since the statute was binding and must be read into the contract. The possible loss of profits, therefore, must be regarded as within the contemplation of the parties. The lower court was right in refusing to allow anticipated profits and, there being nothing in the findings to justify the contrary, we must accept the amount fixed on the basis of just compensation as adequate.

Our attention is directed to the fact that prior to the cancellation of contract No. 1498, the Car Company had manufactured twenty-five mounts, which it would have delivered under that contract except for the fact that they were made applicable to the former contract, No. 949; and it is insisted that the profit which the Car Company would have made upon these mounts should have been included in the amount of its compensation in any event. It is sufficient to say that the Car Company was permitted to deliver these mounts under its former contract at its own request. Presumably the full contract price therefor was paid in the adjustment of that contract.

It is unnecessary to burden this opinion with a statement of the facts in the Freygang and Anderson Manufacturing Company cases. They are not differentiated in any essential respect from the case of the Motor Car Company and are governed by the same reasons and conclusions.

The judgments of the Court of Claims are severally

Affirmed.